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AUTONOMOUS PUBLIC ENTERPRISE—THE GERMAN RAILWAYS*

WHEN the state becomes entrepreneur, selling goods or services on a voluntary basis, a distinctive set of administrative problems results. The characteristics of public enterprise are partly technical, partly empirical. Demand is fluent and frequently unpredictable, even when a legal monopoly exists. Prices are in flux. The market place often calls for swift and risky judgments. Where a relationship must be maintained with a body of consumers, sensitiveness to a kind of opinion is peculiarly important. In addition, the problems of internal management which attend all public administration are increased by the sheer mass of personnel and supplies.

These conditions of public enterprise seem to call for distinctive forms of organization, particularly in relationships to the political organs of government. The need, in a word, seems to be for a combination of stability and flexibility. The first conduces to deliberate, long-time growth; the second takes account of the changeable context of the market in which plans must be worked out. Stability is embarrassed by the flux of politics, for even when there is little real rivalry and seldom a shift of party control, the mere parade of personalities may be disturbing. Meanwhile petty legislative pressures may distort the course of development. The attempt to insulate administration from politics, of course, has not been confined

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to public enterprise. The methods by which modern governments have sought to protect administration, however, have resulted in considerable rigidity. This may be the effect of provisions such as the requirements that all receipts must be covered into a common treasury, that expenditures may be made only pursuant to law and subject to general budgetary prevision and control, that purchasing shall be by competitive bidding, and that employees shall be chosen by examination and shall enjoy a degree of security. Restrictions of this sort not only are understandable historically but also are salutary in themselves. In the further progress of administrative reform, however, it is likely that emphasis will shift from means to ends. The desirability of greater leeway in governmental administration is not confined to economic undertakings. But here the need for day-to-day flexibility is so crucial that it is more than a difference of degree; it amounts to a difference of kind.

In achieving a combination of stability and flexibility in the conduct of the economic undertakings of government, semi-autonomous forms of organization seem appropriate. A vast amount of spontaneous experimentation has occurred throughout the world. Practice has outstripped theory. But an extensive literature, especially in the German language, had begun to gather even before the War of 1914 and it was added to rapidly thereafter.[1] Discussions in English were scantier. In the United States students of government were long preoccupied in the struggle to achieve a modicum of administrative integration. Nevertheless the nature of the problem of the entrepreneurial state was not wholly overlooked. In 1917,

[1] Two citations suffice to illustrate this voluminous literature. On the eve of the *coup* of 1933, the most comprehensive single study in the German language was undoubtedly the symposium edited by Julius Landmann, entitled *Moderne Organisationsformen der öffentlichen Unternehmung*, published in four parts in 1931 and 1932 as volume 176 of the *Schriften des Vereins für Sozialpolitik*. In the railroad field, mention should be made particularly of the volume by Bernhard Witte, *Eisenbahn und Staat—Ein Vergleich der europäischen und nordamerikanischen Eisenbahnorganisationen in ihrem Verhältnis zum Staat* (published in 1932, in the *Weltwirtschaftliches Archiv*, Ergänzungsheft No. 4) which was mainly concerned with the degrees of autonomy found in the government-owned railroad systems.

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W. F. Willoughby wrote suggestively, although briefly, on the utility of a scheme of subsidiary budgets in the conduct of the trading undertakings of the national government.[2] The vogue of government-owned corporations since 1917 has stimulated the flow of what is likely to become a formidable body of analytical material.[3] In Great Britain the multiplication of statutory corporations, challenging the conventional pattern of ministerial responsibility, has awakened significant interest.[4] In a field so prolix and in bulk so recent, analysis waits on description. But there is at least general recognition that the deliberate use of semi-independent structure in the organization of public undertakings rests upon a sounder basis than the promiscuous decentralization so often characteristic of administration in the past. The argument for industrial autonomy is more cogent than the case for independence in the organization of regulative functions.

But even in the conduct of public undertakings under conditions of settled policy, the ideal of autonomous organization is qualified. Limits are dictated by four sets of factors. These are partly political necessities, which would preclude complete autonomy even if it seemed desirable. But there is an inherent need for caution in liberating enterprises from the control of the responsible central organs of the government. The argument for public enterprise being in part that of plentiful and cheap capital, care must be taken, in the first place, that the interest charges incurred in behalf of an enterprise are not increased unduly by its separation from a governmental unit with broad taxing power. In the second place, the government

[2] W. F. Willoughby, "The National Government as a Holding Corporation", POLITICAL SCIENCE QUARTERLY, December 1917, vol. 32, pp. 515-21.

[3] See, for example, the selected bibliography in John McDiarmid, *Government Corporations and Federal Funds* (Chicago, 1938). For a convenient and fairly up-to-date list of nationally owned corporations in the United States, see Ruth G. Weintraub, *Government Corporations and State Law* (New York, 1939), pp. 180-94.

[4] Herbert Morrison, *Socialisation and Transport* (London, 1933); William A. Robson, editor, *Public Enterprise* (London, 1937); Lincoln Gordon, *The Public Corporation in Great Britain* (London, 1938); Terence H. O'Brien, *British Experiments in Public Ownership and Control* (New York, 1938).

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is apt to have an inalienable stake in pricing, especially from the standpoint of its rôle as an arbiter of the claims of different classes of consumers. The political organs of government, thirdly, can hardly be indifferent to the conditions of labor in public enterprises, especially in times when legislation for private enterprise is increasingly tinged with the ideals of stability of employment, sustained purchasing power, and the enforcement of minimum standards. Finally, any government must be sensitive to the need of coördinating at least its own undertakings, and the more so because it is the lack of coherence in private enterprise that in part leads the state to become an active economic participant. The foregoing grounds for limiting the independence of public enterprises, it will be observed, are in addition to various fiscal purposes held by the state itself. These are divers; they may involve the wish to subsidize, the desire to protect the general treasury against the risk of loss, or the will to extract a profit. Thus the desiderata of autonomy and of control are in conflict. The need for a balance is universal; its resolution is an endlessly special problem, varying with the climate of opinion, the form of government, the nature of enterprises, and the many, overlapping motives that lead modern states to become involved in them. Analysis will profit by the consideration of particular cases.

An outstanding instance is the German railway system. It has been and it remains the largest single public enterprise in the world.[5] It gains significance, furthermore, from the fact

[5] This was true even before the additions of 1938 and later. The Austrian network, administered semi-autonomously but with relative centralization under the law of July 19, 1923, was absorbed in the German railways by the ordinance of March 17, 1938 (*Reichsgesetzblatt* [*RGBl*] I, p. 252). *Cf.* Theodor Kittel, "Die Deutsche Reichsbahn in Österreich", *Archiv für Eisenbahnwesen*, May–June 1938, pp. 525 *et seq.* In 1939, the Reichsbahn's net had grown from 55,032 to 63,054 km.; its average number of employees from 779,000 to 847,000; and its operating districts—stressed in its geographically deconcentrated scheme of management—had risen from 26 (to which they had recently been reduced) to 29. *Cf.* Adolf Sarter and Theodor Kittel, *Was jeder von der Deutschen Reichsbahn wissen muss* (Leipzig, 1939), pp. 69-70. Unless otherwise stated, the additions of 1938 and thereafter are not included in statistics given in the present article.

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that for several decades, before the War of 1914 and after, German practice in the use of semi-autonomous administration was outstanding and the theoretical discussion of the problem was undoubtedly the richest in any country. There is additional interest in tracing the changes wrought under National Socialist rule, which raises the question of the rôle of semi-independent forms of organization when party competition is abolished and a concert of action imposed with almost military intensity. If this is considered the pathology of administration, be it remembered that clinical observation of the abnormal, with due allowance, may afford clues of general meaning.

The field of communications, obviously, is not wholly typical of the attitudes which are taken toward autonomy in the conduct of public enterprise. There is a disposition everywhere to subordinate the means of transport to the needs of the whole economy, or favored portions thereof. This is reflected in the degree of regulation which exists in countries in which railroads are privately owned. In post-war Germany, furthermore, the involvement of the Reichsbahn in reparations introduced a peculiar relation which has had a distorting aftermath. But for the observer of the organization of public enterprise, the story of the German railway network has a value quite apart from its inherent importance as a great undertaking.

I. Organization

The governmental relations of the German railroads, and the main forms of their administration after they became publicly owned, may best be surveyed historically. Three periods may be distinguished, coinciding with broad phases of national development: from the beginnings of rail transportation until the close of the War of 1914, the span of the Weimar constitution, and the period of National Socialism. Only the stages since 1920 need be examined intensively. It was then, following unification, that autonomy was not only discussed but also applied from various motives, and subsequently contracted in a series of novel administrative arrangements.

a. *Control by the States prior to 1919.* For a long time after the first steam-propelled train was operated in Germany

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in 1835, railways were privately built and managed. Charters were granted by the separate states and increasingly rigorous measures of control were imposed. An early landmark was the regulative law of Prussia in 1838, a model in form and content. Meanwhile the principle of government ownership was gaining ground. A number of states—Hanover, Oldenburg, Brunswick, Baden and Württemberg—constructed and operated railways at an early date. Prussia's policy was vacillating. For a decade after 1849, it built state-owned railways; but from 1859 to the seventies, under the influence of liberal economic doctrines, railroads in Prussia were again built by private capital. Prussia's system was still a mixed one, largely private, when Bismark began the abortive attempt to bring all railways under the control of the federal government. That ideal had been championed by the economist Friedrich List [6] and expressed in the Frankfort constitution of 1848; it remained to be accomplished under the document drafted in Weimar seventy years later. Prussia was ready to transfer its still relatively small governmental system, but the other states held off. The federal railway office (*Reichseisenbahnamt*), ambitiously set up in 1873 to prepare for unification and subsequent supervision, found its usefulness largely in the negotiation of international railway conventions, in advising regarding tariff matters, and in facilitating military plans affecting the railroads.[7] Balked in general unification, Bismark gave impetus to government ownership in Prussia. So thoroughly was the new policy carried out in the period from 1879 to 1895 that, whereas in 1875 only twenty-six per cent of the mileage in Prussia was public, two decades later ninety-five per cent was in the hands of the state. Beginning in 1879, the Prussian government railways were directed by a separate technical department, the ministry for public works. Bavaria adopted

[6] Westenberger, "Friedrich Lists Wirken für ein deutsches Eisenbahnsystem", *Archiv für Eisenbahnwesen*, July–August 1920, pp. 505 *et seq.*; September–October 1920, pp. 809 *et seq.*

[7] Adolf Sarter and Theodor Kittel, *Die neue deutsche Reichsbahn-Gesellschaft* (Berlin, 1924), p. 10.

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this plan in 1907. The railroad finances, however, were part of those of the state.[8]

On the eve of the War of 1914, therefore, the direction of railroads was a state affair, the ownership prevailingly governmental, and the policies dictated largely by state interests. These were frequently in conflict. Some aspects of traffic, of course, had been unified by provisions of the commercial code. But the proposal from Württemberg in 1902 that rolling stock be pooled got no further than a merger of freight cars. The various states, and especially their diets, were reluctant to relinquish local control. An expanding economy brought continual increases of traffic, which could be counted upon to sustain the still growing state networks.

The War strengthened the agitation for a single system. The army command favored a consolidated administration; public opinion became interested; the Reichstag adopted a resolution which directed the chancellor to prepare a memorial on the unification of all railways.[9] In the face of the continued opposition of some states, notably Bavaria, the government could not do more than vainly to propose a plan of collaboration, the "Heidelberg program".

Unification followed the collapse in 1918, which found the railways depleted and burdened. Their war-time task had indeed been formidable. It had been necessary to furnish equipment and personnel to Germany's allies and to maintain traffic in various occupied areas. Under the "Hindenburg program", adopted in the fall of 1916, many of the regular personnel of all ranks were replaced by less qualified employees. Maintenance was neglected. In accordance with the terms of the Armistice and the Treaty of Versailles, a good deal of equipment—upwards of 5,000 engines and 150,000 cars—was returned or transferred to other countries and more than three thousand miles of main and secondary lines were ceded. Meanwhile, the personnel, which had totaled 719,396 in 1914 and

[8] For a further analysis of the financial relationships, see the continuation of this article in a later issue of the QUARTERLY.

[9] The resolution was adopted on March 26, 1917. See Hans Willkomm, *Die rechtliche Ausgestaltung des deutschen Eisenbahnwesens von 1871 bis 1925* (Dissertation, Cologne, 1926), p. 29.

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913,396 in 1918, swelled to 1,121,745 men in 1919.[10] As late as 1917 the railways had shown a surplus of 786 million RM, but in the course of the next year the operating loss, not counting interest and amortization charges, was 1,324 million RM; in 1919 it was 4,366 million RM.[11]

b. *Unified Operation under the Weimar Constitution, 1919-1933.* The new constitution, promulgated on August 11, 1919, ordained nationalization in the following terms: "It shall be the duty of the Reich to acquire as its own property all railroads serving as means of general communication and to administer them as a uniform system of transportation."[12] The seven state systems were accordingly consolidated under a state treaty of transfer concluded on March 31, 1920.[13]

For the observer, however, the striking administrative feature of operation during the Weimar régime was not unification—for that was interesting only because so long overdue—but the idea of autonomous organization. Like most constitutions of the epoch, Germany's fundamental law of 1919 reflected an awareness of administration. The concept of semi-independent organization was adumbrated in Article 92.[14]

[10] Alfred von der Leyen, "Les Chemins de fer du Reich", *Les Annales de la Régie Directe*, vol. 15, 1922-23, p. 288.

[11] *Ibid.*, pp. 289-90.

[12] Art. 89. The translation is that given by H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), p. 193.

[13] *RGBl*, p. 773. The presumption that the unified system would be organized as a semi-independent corporation was reflected in assurances to the former "railway states" that they would have places on the board of directors—a promise which was disregarded when a corporation was created pursuant to the Dawes Plan. The central government took the attitude that the board was too limited in numbers to permit representation of the *Länder* but the latter were successful in asserting their right as a matter of law. *Cf.* remarks of W. C. Simons, former president of the *Reichsgericht*, *American Bar Association Journal*, vol. 15, 1929, p. 767. *Cf.* also, *infra*, note 32.

[14] "The national railway system, notwithstanding the inclusion of its budget and its accounts in the general budget and general accounts, shall be administered as an autonomous economic enterprise, responsible for its own expenditures including interest and amortization of the railroad debt and the accumulation of a railroad reserve fund. The amount of this amortization and of the reserve fund, as well as the purposes for which the reserve fund shall be used, shall be regulated by special law."

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The working out of the slightly ambiguous declaration was complicated by two sets of factors. At first the financial predicament of the railroads rendered their independence impossible. When they became profitable, after stabilization, they were soon implicated in reparations under the Dawes Plan of 1924 and the Young Plan of 1930. These conditions reacted profoundly upon their organization. It is necessary to take account of four successive phases of structure between 1920 and 1933.

(1) *The period of parliamentary tutelage, 1920-1923.* Despite the administrative ideal set by the constitution, the conditions in 1920 and thereafter were hardly favorable to autonomy. Various political forces resisted any such arrangement. The *Länder,* for example, tended to rely on their influence in the central political organs to protect certain surviving stakes which they had in the transferred state systems. But the decisive obstacle to autonomy was the financial dependence of the railways during a period of acute financial embarrassment. In 1920, for example, the ratio of railway expenses to revenues was 172.8 : 100, and in 1921, 108.5 : 100.[15] In 1922 expenses substantially paralleled revenues, the coefficient being 98.1. During the peak of inflation in 1923 the coefficient again became unfavorable and reached the stupendous figure of 330.9.[16] The severance during the Ruhr occupation of one of the most remunerative parts of the network, with the widespread dislocations of strikes and other resistance, contributed seriously to the predicament of the railroads. While aid from the general treasury was thus needed in large amounts, a departmental régime was almost unavoidable. On the other hand, once currency stabilization had been achieved, the reaction to the heavy drain of the railroad subsidies was a factor in the interplay of forces which led to a more self-reliant type of administrative arrangement.

[15] Prior to 1924 the business year of the railroad system was from April 1 to March 31. Since 1925 the business year has been the calendar year.

[16] A. F. Napp-Zinn, "Die Deutsche Reichsbahn-Gesellschaft", *Schriften des Vereins für Sozialpolitik* (Munich and Leipzig, 1931), vol. 176, part 2, p. 333.

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(2) *The creation of the Unternehmen Deutsche Reichsbahn, 1923-1924.* During the period of subsidy, with ever mounting contributions from the treasury, the critics of the existing organization were stimulated. They pointed to a number of overt defects: to disturbances in operation, to overstaffing and bad morale, to augmented labor costs due to the introduction of the eight hour day, and to the sluggishness in the adjustment of tariffs. These were portrayed as signs of the need for a radical reconstitution of the enterprise. The agitation had several sources, and, although its practical consensus was the desirability of more autonomy, it had several ends. Some business groups, symbolized by Stinnes, advocated the abandonment of government ownership altogether. The National Federation of Industry in March 1922 suggested the transfer of the railways to a mixed corporation in which various phases of industry would be represented, along with public bodies and the railway personnel.[17] The more extreme elements of labor, raising the cry of the "railroads to the railroaders", urged autonomy under very different auspices. The traffic experts, such as von Breitenbach, Hoff, Franke and von der Leyen, preferred government ownership but with an infiltration of commercial practices. In the latter view a majority of the Socialization Commission concurred.[18]

The outcome was a compromise, in which government ownership triumphed but notable steps were taken toward autonomy in management. By the time the sixth draft emerged from the discussions, the stabilization of the mark prepared the setting for a challenge to the self-reliance of the railroad administration. On November 15, 1923 the minister of transport, who had been one of the staunchest supporters of government ownership, announced the termination of national subsidies.[19] The basis for the new régime was laid in the en-

[17] *Die deutsche Eisenbahnfrage: Gutachten, erstattet für den Reichsverband der Deutschen Industrie* (Berlin, 1922).

[18] *Gutachten der Sozialisierungskommission über die Organisation der Reichseisenbahnen* (Berlin, 1921).

[19] Witte, *op. cit.*, pp. 47-48; Sarter and Kittel, *Die neue deutsche Reichsbahn-Gesellschaft*, pp. 13-14; Alfred von der Leyen, *loc. cit.*, pp. 293 *et seq.*

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abling statute of December 8, 1923,[20] pursuant to which an ordinance was promulgated on February 12, 1924.[21] There was thus created an autonomous undertaking having juristic personality of its own, under the name *Deutsche Reichsbahn*.[22] Financial self-reliance was presupposed; the salient features of the plan were fiscal. Management was in charge of a director-general who was also minister of transport. It may be remarked in anticipation that the outline of the arrangement strikingly resembled the scheme instituted by the railway law of 1937.[23] In the face of foreign entanglements, the law of February 12, 1924 was in force barely a year. But its continued significance is the proof it afforded that the search for autonomous forms rose from indigenous sources, deeper than the external pressures soon to be embodied in the Dawes Plan.[24]

(3) *The creation of the Deutsche Reichsbahn-Gesellschaft and the period of the Dawes Plan, 1924-1930.* A new national railway law enacted August 30, 1924[25] reconstituted the railways as an autonomous entity called the *Deutsche Reichsbahn-*

[20] *RGBl* I, p. 1179.

[21] *RGBl* I, p. 57.

[22] Gerhard Lassar, "Reicheigene Verwaltung unter der Weimarer Verfassung", *Jahrbuch des öffentlichen Rechts der Gegenwart*, vol. xiv (Tübingen, 1926), pp. 184-6.

[23] *Cf. infra*, pp. 502-4.

[24] Further indication of a domestic tendency was afforded by the law of March 18, 1924 (*RGBl* I, p. 287) which gave the post office a degree of financial independence. Central control remained closer than in the case of the railroads, but a managerial council (*Verwaltungsrat*) was injected. Subsequent developments paralleled the railways in some respects. Thus the *Verwaltungsrat* was replaced by an advisory board (*Beirat*) under the law of February 27, 1934 (*RGBl* I, p. 130). *Cf.* Wilhelm Ohnesorge, "Die Deutsche Reichspost", *Deutsches Institut für Bankwissenschaft und Bankwesen, Probleme des Deutschen Wirtschaftslebens* (Berlin and Leipzig, 1937), pp. 61 *et seq.*

[25] *RGBl* II, p. 272. In preparing this legislation, the railroad experts for the Dawes Commission—Sir William Acworth and Gaston Leverve—were joined by two German representatives to form a Committee of Organization, which sat from July 10 to 24, 1924. Three bills implementing the Plan were approved by the Economic Council on August 23, and then by the Reichstag, which took care to act by the majority necessary for constitutional revision, the main bill passing on August 29 by 311 to 127 votes. *Stenographische Berichte, Verhandlungen des Reichstags*, vol. 381, pp. 1087, 1134.

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Gesellschaft, in order to give effect to the report submitted to the Reparation Commission on April 9, 1924, which was the basis of the London Convention of August 9 and 16, 1924. The new arrangement for the railroads became operative on October 30, 1924. The essence of the scheme was to mortgage the railway network and to secure its earnings for the partial payment of reparations (about 38 per cent). The details may be postponed for consideration in connection with finances generally.[26] Attention here may fitly concentrate on the scheme of supervision. From the standpoint of the development of autonomous methods, the important and unfortunate effect of the arrangement under the Dawes Plan was the confusion it left in some German minds between foreign intervention and the idea of autonomy in management.

The double inspiration of the new organization of the railways was reflected in its central organ, the Board of Management (*Verwaltungsrat*).[27] This body was partly an administrative device which was domestic in conception, and partly a method of international control. Half of its eighteen members were appointed by the German government or chosen by domestic holders of preferred shares; half were selected by the reparations trustee. Terms were for six years and were overlapping; reëlection was allowed. The chairman, who was elected by the Board each year by a three-quarters vote, must be a German. Of the nine members named by the reparations trustee, five might be Germans; this indeed was the practice from the outset, only four being foreigners. Although invested with important managerial powers, the Board was expected to devolve much responsibility on a directorate, consisting of a Director-General—elected by a three-quarters vote and similarly removable—and a number of directors, who were appointed by the Board on the recommendation of the Director-General. The Director-General and the directors (who could

[26] The matter is dealt with in the second installment of this article.

[27] An advisory committee, concerned largely with rates, had been established by administrative action in 1922, while the system was still under parliamentary tutelage. The plan for the *Unternehmen Deutsche Reichsbahn* contemplated a possible *Verwaltungsrat*, but none was set up. Lassar, *loc. cit.*

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not be members of the Board) were required to be Germans and their appointment had to be confirmed by the President of the Reich.

In addition to representation through one half of the Board of Management, the holders of reparation bonds had additional leverages. A Railway Commissioner (Gaston Leverve) was appointed for a three-year term by the foreign members of the Board. His ordinary duties were those of observation; his prerogatives were normally those of access to information. But if the company disregarded its obligations under the law, this officer had large potential powers as a virtual receiver.

These mechanical devices to assure payment of reparations to 1964, unless sooner discharged, were annoying enough, although in practice the extreme forms were not invoked. The most irritating feature, perhaps, was the seeming attack on the principle of public ownership contained in Acworth's original report and the view expressed by the Commission of Experts itself. The latter stated:

> The whole spirit of possession by the Reich in the past was directed, in the first line, to conduct the railroads in behalf of German industry and then, in the second line, to conduct them as a profit-making undertaking. In view of the circumstances, a complete break with old traditions is a pressing necessity. We accept the inferences and recommend the transformation of the German railways into a "share company."

The act of August 30, 1924 blurred the conflicting principles and purported to treat them as consistent. It stated: "the company shall operate the railways in accordance with business principles, due regard being paid to German economic interests." So far as "business principles" meant skill and energy in management, of course, it could be said in truth, as many apologists within Germany have pointed out, that in the long run only railroads so operated could usefully serve the German economy.[28] But the risk of a contradiction was present.

[28] O. Conrad, "Zur finanzwirtschaftlichen Selbstständigkeit der Deutschen Reichsbahn", *Archiv für Eisenbahnwesen*, July–August 1936, p. 741.

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So far as the overriding of national policy was concerned, the original proposals had been softened during the period of negotiation. Thus provisions were made for a partial veto and partial initiative by the government in regard to rates. At the instance of the German members of the group of transportation experts, a special railway court (*Reichsbahngericht*) was instituted. The initiative in rate changes might be taken by the company, but the approval of the government (acting through the minister of transport) was required. In the event of a disagreement which had not been definitely settled at the end of six months, the company might appeal to the railroad court.[29] A further possibility for adjudication was provided in 1924. Disputes between the German government and the Reparation Commission, any government represented in it, the trustee, or the Railway Commissioner were to be referred to an arbitrator nominated by the president of the Permanent Court of International Justice.[30] A limited initiative in rate changes was left with the government, subject to appeal in case of dispute to either the court or the arbitrator.[31]

The novel hybrid arrangement of 1924, effective on October 30, was in force for a little over five years, when the adoption of the Young Plan made possible a modification of the organic railway act in 1930. During this period alterations were precluded by international agreement. The changes wrought were merely incidental and non-statutory, although the recognition of the right of representation of the states in the Board of Management was somewhat alien to the general ideal of unification and autonomous administration, even if not in conflict with the distinctive features of the act of 1924.[32]

[29] Sec. 44 of the law of 1924. Apart from rates, the government possessed a veto over the construction of new lines and the conversion of secondary lines (sec. 37). For an account of decisions of the railway court, *cf. infra*, p. 500.

[30] Sec. 45 of the law of 1924.

[31] Sec. 33 (5) of the law of 1924.

[32] The Court of State (*Staatsgerichtshof*) on May 7, 1927, recognized the right of Prussia to name a member to the Board of Management. Later, by a decision of November 25, 1930, a similar right on the part of Bavaria, Saxony, Württemberg and Baden was recognized. Napp-Zinn, *loc. cit.*, p. 363. Dr. Napp-Zinn speaks of this as "a very contestable decision, with which,

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In Germany generally, the five-year period of the Dawes Plan was one of relief after stabilization, of relative recovery and seeming reconciliation, of capital-building, of industrial activity followed by stagnation, with the tide turning throughout the world in 1929-30. During this period the railways contributed to reparations, but the rate structure continued to be shaped from the standpoint of German economy rather than mere considerations of net revenue.[33] Friction between Reichsbahn and government was perhaps more a reflection of the autonomous elements than of the foreign taint in the railway organization. The members of the Board of Management appointed by the government often voted against it with the others. Some parliamentary criticism struck at the presence of large suppliers on the Board.[34] Doubtless much of this was soundly taken. But unfortunately the public reaction, influenced by the attacks of deputies and labor leaders, stigmatized the railway system as a "foreign company".[35]

(4) *The Young Plan, the reorganization of the Deutsche Reichsbahn-Gesellschaft in 1930, and its operation, 1930-1933.* Foreign participation in railway administration was abandoned with the acceptance of the Young Plan in 1929[36] and its

however, the Reich must comply." For the English text of the decision, *cf.* H. Lauterpacht, *Annual Digest of Public International Law Cases — Years 1929-1930* (London, New York and Toronto, 1935), pp. 330-3.

[33] Conrad, *loc. cit.*, p. 741; for a comment on the new rates of August 1, 1927, which entailed a revenue loss of 80 million RM, *cf.* Hans Baumann, *Deutsches Verkehrsbuch* (Berlin, 1931), p. 218. The trend of rates will be considered further in a later installment of this article.

[34] *Cf. Stenographische Berichte, Verhandlungen des Reichstags*, vol. 427, p. 4284 (A, B). In the sitting of May 20, 1930, the Socialist deputy Scheffel declared that "many things are rotten in Dorpmüller's state". *Ibid.*, p. 5214 (C). He was hardly thinking of foreign influences.

[35] Theodor Kittel, "Die Grundgedanken der neuen Reichsbahn-Gesetzgebung", *Archiv für Eisenbahnwesen*, March–April 1937, p. 259. The writer remarks that even when foreign supervision had been wholly eliminated, "the Reichsbahn had still to bear the consequences of this unfortunate attitude."

[36] On September 16, 1928, an agreement was concluded in Geneva among the participating states to reconsider the reparations question through committee. Proposals reported on June 7, 1929 were approved in principle at The Hague in August 1929, and the plan of a revised railway law, drafted by a mixed committee, was accepted at a second conference at The Hague in January 1930.

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incorporation in the revised railroad law of March 13, 1930.[37] This statute fixed the organic structure of the system for nearly seven years, although the financial obligations originally entailed were drastically modified even before the National Socialists took control in 1933.

The settlement of 1930 retained the main administrative features of the statute of 1924. The railways were still incorporated as a *Gesellschaft* and were so entitled. Alterations in organization, though not absolutely forbidden, were subject to international restrictions.[38] The effort was still to assure an autonomous administration and to that end a powerful Board of Management of eighteen members was retained as the central organ of the system.[39] But the changes were crucial, being partly fiscal, partly structural. Both were calculated to remove foreign control in internal matters, while preserving the railways as a source of reparations.

On the fiscal side, the arrangements canceled the mortgage bonds held by the reparations trustee, which constituted a first claim upon all railway properties. In lieu of other forms of railway contribution, it was stipulated that the company should pay, as a contribution of the German railways to the

[37] *RGBl* II, p. 369.

[38] The Hague convention (Annex VI, A) permitted alterations which respected "the independent character of the Company with its autonomous administration", subject to approval by a permanent expert joint committee.

[39] Regarding the functions of the Board, sec. 15 of the new statutes, under the act of 1930 provided: "The Board of Management shall control the management of the company and shall decide on all questions of importance, or of principle, or of general application, and more especially on such questions and matters as are set out below: the appointment of the Director-General and of the superior officers on the recommendation of the Director-General; the budget proposals; the balance sheet and the profit and loss account; the distribution of profits; the application of the liquid resources of the company; the authority to take up loans and credits at the charge of the company, and to give mortgage security for the same; the approval of any expenditure on capital account beyond such limit as may be fixed by the Board; the approval of the general regulations governing the legal status and conditions of service and of pay of the employees, including the general regulation of salaries and wages."—Here, as elsewhere in quoting from the act of 1930, the English text is that given in Reparation Commission, *Official Documents* (1930), XXIII, Appendix, p. 243. The Board was required to meet at least once every two months.

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reparation annuities payable by the Reich, a tax to an amount of 660 million reichsmarks per annum. This fixed charge was bulwarked in the following terms:

> The reparation tax shall be paid out of the operating receipts of the company with recourse, if necessary, to all reserves. It shall rank after the expenditure on personnel and on the same footing with expenditure on material and consumable stores; it shall enjoy priority over any other tax now levied on the *Reichsbahn-Gesellschaft,* or which may be so levied in the future, and shall rank prior to any other charge, by way of mortgage or otherwise, on the company.

Payment of the so-called tax was to be made in monthly installments directly to the Bank for International Settlements. The charge was to run until April 1, 1966.

On the structural side, the act of 1930 provided that all eighteen members of the Board of Management should be of German nationality, chosen by the government or by the holders of preferred shares. The Board might "delegate its powers, so far as it thinks fit, to a permanent committee consisting of six members."[40] The office of Railway Commissioner was abolished. The 1924 arrangements for the control of rates continued unchanged. Increases in capital through the issuance of further preferred shares were allowed but only with the assent of the government.[41] "The government of the Reich", stated the act, "is entitled to send one representative to the meetings of the Board of Management, in accordance with section 14 of the company's statutes."[42]

Internally considered, the structural arrangements of 1930, though essentially the same as in 1924, emphasized both the prerequisite of German nationality and also the managerial

[40] Previously it had been necessary that three members of the executive committee should come from each of the two groups in the Board and that one, at least, be of foreign nationality. In recognition of the possibility of mixed ownership through the sale of preference shares, it was provided (sec. 17 of the statutes, that is, by-laws) that "One of the members shall be chosen from the representatives of the preference shareholders of Group A if they so desire." *Cf. infra,* p. 501.

[41] Sec. 3 of the statutes.

[42] Sec. 32 of the law.

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oversight of the government. The new scheme provided: "The Director-General shall be appointed for a period of three (3) years by the Board of Management, which shall first get in touch with the government of the Reich; he shall be eligible for re-appointment." [43] As in 1924, the directors were to be appointed by the Board on the recommendation of the Director-General; but now a simple majority, not a three-fourths vote, was sufficient for the choice of the Director-General and the directors, all of whom must be confirmed by the President of the Reich. In regard to the removal of the Director-General, the provisions of 1930 tended to strengthen the relative power of the Board internally and of the government in relation to the system as a whole. The arrangement in 1924 had required a three-fourths vote to remove the Director-General. The act of 1930 stated that "The Board may at any time remove the Director-General." [44] At the same time, the government was given the right of initiative in the possibly critical matter of removal. "Where the government of the Reich", it was said, "is of opinion that the Director-General has violated the company's statutes, it may require the Board of Management to take a decision in the discharge of the Director-General."

[43] Sec. 19 of the statutes.

[44] *Ibid.* This prerogative was qualified only by the slight deterrent which might inhere in the attached stipulation: "The removal of the Director-General shall not affect the rights to salary and allowances which he may possess under his contract of appointment." The theory of autonomous administration of public enterprise in Germany has sometimes attached importance to the fact that, in accordance with German corporate practice, the operating heads (*Vorstand*) are often engaged under contracts of employment for fixed periods, during which their salaries cannot be stopped although their authority may be entirely withdrawn. German corporate law and custom were marked by the notion of a separation of oversight (conducted by an *Aufsichtsrat* in behalf of the stockholders) and management proper. This separation had useful implications from the standpoint of the conduct of public enterprise on a corporate basis. In special cases like that of the Reichsbahn, however, the distinction was blurred; thus the Board was significantly called *Verwaltungsrat*, not *Aufsichtsrat*. National Socialism, by means of extra-legal pressures but also expressly by the terms of the new corporation law of January 30, 1937, has tended to strengthen the position of the *Vorstand* in corporate industries generally; it has done this at the expense of the *Aufsichtsrat* but especially at the expense of the stockholders' meeting.

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The liquidation of the Young Plan began very shortly. The Hoover arrangement of 1931 introduced a moratorium. In 1932 the Lausanne Conference resulted in the instrument of July 9.[45] Germany was to "deliver to the Bank for International Settlements German government five per cent redeemable bonds, to the amount of three milliard reichsmarks gold of the present standard of weight and fineness." It was stated that "On its coming into force the present Agreement will put to an end and be substituted for the reparation régime provided for in the agreement with Germany signed at The Hague on January 20, 1930, and the agreements signed at London on August 11, 1931, and at Berlin on June 6, 1932; the obligations resulting from the present Agreement will completely replace the former obligations of Germany comprised in the annuities of the 'New Plan.'" The ramifications of the Lausanne understanding need not be explored. It suffices to note that the certificate of obligation for the payment of the reparation tax given to the Bank for International Settlements was to be returned to the Reichsbahn. Before National Socialism came to power in 1933, therefore, the liberation of the railways was substantially accomplished.

c. *The Organization of the Railroads under National Socialism, 1933-1939.* The railway structure since 1933 has had two chronological phases. The first period was one of practical adaptation of the act of March 13, 1930, which continued in formal force. The second was inaugurated by the new organic act of February 10, 1937, which was elaborated without important structural change in the railway law of July 4, 1939. Each phase claims attention in turn, although especial interest attaches to the acts of 1937 and 1939.

It was to be expected that, whether by practical adjustment or by formal change, increased emphasis would be placed upon the subordination of railroads to the coördinating purposes of the ascendant state. In tracing the reorganization of the rail-

[45] *Final Act of the Lausanne Conference* (mimeographed official release). The settlement of 1932, simply stated, was for three billion RM bonds to be marketed later through the Bank for International Settlements. Actually nothing was paid after 1931.

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roads wrought by National Socialism, therefore, it is appropriate to take account, not only of the confusion of the autonomous form with reparations, but also of certain types of friction which had occurred since 1924 between the government and the railway management. These may be illustrated by noting certain questions decided by the special railway court after 1924.

Note has already been taken of the existence of the special railway court originally provided by the law of August 30, 1924.[46] A decision of March 13, 1926 had gone against the government in a question of tax adjustment.[47] On the other hand, in the same year the ministry of labor had been upheld in a decision concerning labor conditions on the railroads.[48] Similarly, a little later, it had been ruled that the *Reichsbahn-Gesellschaft* was not exempt from the Prussian state stamp tax.[49] But the decision of the special railway court which had been of most moment was that of August 24, 1928, clearing the way for a change in the rate structure and making possible increases of freight and passenger charges calculated to bring 250 million RM of additional revenue.[50] This experience with judicial adjustment had hardly been conclusive. Certainly it had not shown that a device such as the special railway court might not be a useful adjunct in safeguarding a scheme of

[46] Under sec. 44 of the law of 1924 the court was to consist of a president appointed by the head of the *Reichsgericht* and of two members "appointed for each difference by the President of the *Reichsgericht*, the one on the nomination of the Government and the other on the nomination of the Company. . . ." *Cf. supra*, p. 494.

[47] *Archiv für Eisenbahnwesen*, July–August 1926, p. 995. A law of August 10, 1925 (*RGBl* I, p. 252) sought to require that national undertakings contribute to communities in aid of the housing of their employees. The court found this requirement incompatible with the tax exemption guaranteed to the *Reichsbahn-Gesellschaft* in sec. 14 of the railroad law of 1924, the priority of which it recognized as an international obligation. The government deferred to a declaratory judgment in this case.

[48] *Ibid.*, September–October 1926, p. 1203.

[49] *Ibid.*, March–April 1928, p. 552.

[50] *Ibid.*, November–December 1928, p. 1526. Additional cases are cited by Franz Albrecht Medicus, "Reichsverwaltung", *Jahrbuch des öffentlichen Rechts der Gegenwart* (Tübingen, 1932), vol. 20, p. 73.

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autonomous public enterprise. But, in the international setting in which such adjudication had been cast, it was viewed by the exigent régime that took hold in 1933 as an inconvenient, even dangerous, element of irresponsibility in an essential service.

(1) *The period of practical modification of the law of 1930.* In the period through 1936, the curtailment of autonomy was accomplished largely within the frame of the law of 1930. A formal act of February 27, 1934,[51] which described itself as a "law concerning a simplified and more economical administration," made a number of minor structural changes. Among other things, it abrogated the state treaty of March 31, 1920 and thereby abolished the particularistic prerogatives of the *Länder* and deprived them of the right they had won to name five members of the Board of Management.[52] The central government thus attained the right to name all of the members of the Board. This was not curtailed in practice by the existence of two members chosen in behalf of the preferred shareholders. The latter were regarded as really certificate holders; their voting right was exercised by the president of the Court of Audit who, in consultation with the cabinet, selected those who were to be their ostensible representatives.[53]

The degree of transformation that could be accomplished within the existing form was illustrated in the change wrought quickly in the personnel of the Board of Management. Of the eighteen individuals who were members in 1931, only three were still serving in the middle of 1933. The rapidity and extent of the inundation was shown in the fact that only one change in the membership of the reconstituted Board occurred between the middle of 1933 and 1936. Since 1933, the presiding officer has been a state secretary in the ministry of transport.

[51] *RGBl* I, p. 130.

[52] *Supra*, note 32. The sovereignty, so-called, of the *Länder* was abolished by the law of January 30, 1934 concerning the reconstruction of the Reich (*RGBl* I, p. 75) in conjunction with an executive ordinance of February 2, 1934 (*RGBl* I, p. 81).

[53] Theodor Kittel, "Die Grundgedanken der neuen Reichsbahn-Gesetzgebung", p. 262.

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The adjustment which was going on within the old law was symbolized by the dropping of the word *Gesellschaft* in the title of the railway organization. The term, indeed, had become no more than a token of an autonomous intent, significant administratively if at all. The founders' shares had been reserved to the Reich from the outset; they had never been issued and constituted a mere bookkeeping entry which evidenced the exclusive ownership of the railroads by the central government. The preferred shares, as has been noted, carried no practical control. The new régime could hardly avoid giving considerable administrative leeway to so vast an affair as the railways, but, especially against the background of its early application to the Reichsbahn, the group in power had no fondness for *Gesellschaft* as an emblematic word.

(2) *Formal reorganization under the laws of February 10, 1937 and July 4, 1939.* The structural changes wrought in 1937 gave occasion for the celebration of a recapture of the railroads which had long since been effected. On January 30, Hitler informed the Reichstag "that in the sense of the restoration of German equality, the German railways and the German Reichsbank have been stripped of their previous character and have again been restored to the Reich's complete sovereignty."[54] The last and only formal filaments of the agreement at The Hague were brushed off. On February 2, the veteran Director-General of the railways, Dr. Julius Dorpmüller, was appointed to the new post of minister of transport, in which were fused the duties of general manager.[55] Without breaking a continuity of personal leadership which antedated the victory of National Socialism, therefore, the articulation of the railways in the political organization of the Reich was symbolized by placing him in the cabinet. On February 10, 1937, the law concerning the new organization

[54] *Ibid.*, p. 257; *New York Times*, January 31, 1937, p. 27.

[55] The new ministry was formed by the division of the former ministry for posts and transport. Its head, Eltz von Rübenach, a survivor from pre-Nazi governments, resigned at this time.

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of the Deutsche Reichsbahn and the Reichsbank was decreed,[56] capped on July 4, 1939 by the law concerning the Deutsche Reichsbahn (*Reichsbahngesetz*).[57]

The decree-laws of 1937 and 1939 were in fact superimposed upon the system. The name which they used—Reichsbahn, without the term *Gesellschaft*—merely confirmed a change effected in 1936. Structurally, two important alterations were made in 1937. In the first place, the "leader principle" of direct and personal devolution was recognized in the provision that the general manager was at the same time to be a cabinet minister. In the second place, consistently with the foregoing, the Board of Management—around which autonomous administration had supposedly revolved but which had already been reduced to a rôle more consultative than authoritative—was abolished. Its place was taken by a purely advisory although respected body, the *Beirat der Deutschen Reichsbahn*.[58] The paramount position of the minister of transport was emphasized in the edict of February 12, 1937 concerning the working rules (*Geschäftsordnung*) for the Deutsche Reichsbahn,[59] and again in the administrative ordinance of July 1939.[60] The minister, it was stated, is "the manager" (*Leiter*) of the Deutsche Reichsbahn. In this capacity he is called "Director-General of the Deutsche Reichsbahn". He has the final exclusive decision in all questions which are reserved to him according to this administrative ordinance and the business regulations (*Geschäftsanweisungen*) of the Deutsche Reichsbahn or which he elects to handle himself in individual cases. He has an all-embracing regulatory power. Below him, the rôle of the collegial *Vorstand* is now being played by a state secretary (acting also as a deputy director-general) and department heads (*Ministerialdirektoren*) in the ministry of transport.

[56] *RGBl* II, p. 47.

[57] *RGBl* I, p. 1205.

[58] The law of July 4, 1939 reduced the membership of this body to fourteen: they are appointed by the cabinet, with the exception of two, who are selected by the deputy leader, and those chosen ostensibly in behalf of the holders of preferred stock.

[59] *Reichsministerialblatt* (*RMBl*), p. 58.

[60] *RMBl*, p. 1313. *Cf. Die Reichsbahn*, July 19-26, 1939.

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But the separate existence and coherence of the railway system as an economic entity have been recognized in the declaration that it constitutes a "separate property of the Reich" (*Sondervermögen des Reiches*). The term has a juristic and an economic connotation. From the legal standpoint, the phrase implies that the Reichsbahn leads a juristic life of its own, has its own assets and liabilities, enters into contracts in its own name and for its own account; that it can bring suits and be sued; and that it is authorized to take up loans (the consent of the finance minister being required, however). From an economic standpoint, the term *Sondervermögen* is equally significant. The separation of the Reichsbahn, as also the Reichspost, from the other assets of the Reich arose originally from the necessity of placing these vast undertakings on their own feet, self-reliant in regard to their credits with heightened responsibility, and able to act with alacrity in accommodating their operating policies to the economic situation. From these standpoints, it may be recalled, in summary, that the status of the railway system under the laws of 1937 and 1939 has presented many of the characteristics of the *Unternehmen Deutsche Reichsbahn* of 1923-4.

(3) *The railway personnel under National Socialism.* A brief survey of the elements of change and of continuity in the treatment of personnel is a necessary supplement to the foregoing discussion of structural developments. Vast, indeed, are the direct implications of a body of 800,000 workers. Counting their families, two and a half million persons have been involved. One German in twenty-five has derived his economic support from the Reichsbahn.

The treaty of acquisition in 1920 provided that the railway officials, salaried employees, and workers should be taken over and that those who were considered officials (*Beamte*) under the laws of the several states should automatically become officials of the nation, subject to the protection of Article 129 of the constitution and of the civil service law of May 18, 1907. When the railway system was reconstituted as the *Reichsbahn-Gesellschaft* in 1924, the arrangements regarding personnel

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were a compromise. The experts who advised the Dawes Commission would have preferred to deprive the railway employees of all governmental attributes. This would have been in accordance with the spirit of the Dawes Plan; besides, the logic of thoroughgoing autonomy seemed to require it. The government of the Reich was naturally opposed; its policy coincided with the demand of the railway personnel that their vested rights be preserved. It would have been strange had the other view triumphed. Semi-independent administration of railways has been introduced in many countries but no such scheme, apparently, has ventured to remove the personnel wholly from the civil service.[61] In countries of private operation, moreover, the railroad workers tend to take on more and more elements of status; at many points their position already approximates that of a civil service. Under the law of 1924, the officials of the German railways remained officials: they were subject to most of the essential safeguards and disabilities of official status; but in name (*Reichsbahnbeamte*) they were separate.[62] The formal distinction gave the leaders of National Socialism opportunity for a minor paper conquest, for there was the great body of railway officialdom to rescue from ambiguous alienage and to welcome home to the Reich.

The aftermath of the armistice, as has been remarked, brought a swollen railway personnel—1,123,000 in 1919, as against 693,000 in 1913. Between 1919 and 1926 about 400,000 persons were dropped from the unified system.[63] A contraction of personnel took place again after a high point in the busy years, 1928-9, when the aggregate was 713,119; in 1932 the total was down to 600,595. The increase thereafter is shown in the following table:[64]

[61] Witte, *Eisenbahn und Staat*, pp. 197-8.

[62] The compromise was embodied in detail in the national railway personnel law of August 30, 1924 (*RGBl* II, p. 287). The amendment to the railway law in 1930 (which remained the basic law of the railway system until 1937) did not change the underlying conditions of personnel.

[63] Julius Dorpmüller, "Die Deutsche Reichseisenbahn 1918-1936", *Deutsches Institut für Bankwissenschaft und Bankwesen, Probleme des Deutschen Wirtschaftslebens* (Berlin and Leipzig, 1937), p. 41.

[64] *Schriften des Instituts für Konjunkturforschung, Halbjahrsberichte zur Wirtschaftslage*, November 1938, p. 173.

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PERSONNEL OF THE GERMAN REICHSBAHN

Year	Workers and Salaried Employees	Civil Servants	Total	Percentage of Civil Servants in total
1929	404,303	308,816	713,119	43.3
1932	306,481	294,114	600,595	48.9
1934	356,581	274,324	630,905	43.4
1936	377,683	282,260	659,943	42.8
1937	419,984	283,562	703,546	40.3
1938	471,722	288,639	760,361 [65]	37.8

But in understanding recent policy regarding the assimilation of the Reichsbahn to the civil service, proper, it is important to bear in mind the distinction between officials (*Beamte*), salaried employes (*Angestellte*),[66] whose relationship is one of contract rather than status, and laborers (*Arbeiter*). The two latter categories do not have the prerequisites nor all the perquisites of the permanent civil service. The distinction, under one set of names or another, exists in most countries though it is seldom clear; Germany, especially, has stressed it as a formal demarcation.[67] Rigidity in the personnel of a large public undertaking is apt to be lessened by keeping down the proportion of full civil servants. In the decade before 1933, the managements of autonomous public enterprise in Germany were pushing in that direction. It is interesting to note how far the tendency has been carried since the advent of National Socialism. In 1925 about 45 per cent of the total personnel of the Reichsbahn consisted of officials; in the same year about 85 per cent of postal employees held that status. In 1929, the percentage on the Reichsbahn was 43.3.[68] It rose, naturally, during the contraction of railroad

[65] The annual report (*Geschäftsbericht*) for 1938 indicated a total maximum personnel, including Ostmark and Sudeten, of 922,200, of whom 38.8 per cent had the status of civil servants; the average was 846,559. *Cf.* Sarter and Kittel, *Was jeder von der Deutschen Reichsbahn wissen muss*, p. 46.

[66] *Angestellte* are characteristically white-collar, or brain, workers, employed on a temporary contractual basis. In 1937 there were 4,000 of this category employed on the Reichsbahn.

[67] *Cf.* article on "Amt" by G. Müller-Machens in *Staatslexikon*, vol. 1 (5th edition, Freiburg, 1926), pp. 154-55. *Cf.* also comparisons drawn in G. E. Robinson, *Public Authorities and Legal Liability* (London, 1925), p. lxii.

[68] *Cf.* table, *supra*.

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operations in the next few years, being 48.9 per cent in 1932. Thereafter the proportion of officials dropped, being 43.4 per cent in 1934, 42.8 in 1936, 40.3 in 1937, and 37.8 in 1938.[69] A French observer is struck by the relatively high percentage of employees on the German railways who are not civil servants in the full sense.[70]

The declining proportion of civil servants would in any case qualify the importance of the steps taken since early in 1933 to bring railway officials under the formal roof of the general civil service. The law of April 7, 1933,[71] which declared its purpose to be the "restoration of the professional civil service", and the supplementary decrees applied to Reichsbahn employment as regards the paragraphs relating to Aryans and to communists. The comprehensive civil service act of January 26, 1937 extended to the railways.[72]

Meanwhile "the restoration of the professional civil service", even in the technical field of railroading, showed one aspect of its intent. Between 1923 and 1938, about 17,000 persons (of whom 3,000 had official status) were given preferential promotions on account of the affiliation with the NSDAP.[73] But

[69] After the absorption of railways in Ostmark and Sudeten, the percentage was 38.8.

[70] Marcel Peschaud, "Le Reich et ses chemins de fer", *Revue Politique et Parlementaire*, March 10, 1936, p. 451.

[71] *RGBl* I, p. 175.

[72] *RGBl* I, p. 39. Also applicable to railway personnel are the following: the national disciplinary service act of January 26, 1937, *RGBl* I, p. 71; and the national principles governing the appointment and promotion of national and state employees, October 14, 1936, *RGBl* I, p. 893. *Cf.* James Kerr Pollock, *The Growth of Greater Germany* (New York, 1938), pp. 104 *et seq.*, 110.

[73] E. Ziche, "Die Leistungen der Deutschen Reichsbahn nach dem Geschäftsbericht 1937", *Archiv für Eisenbahnwesen*, July–August 1938, p. 900. The veteran manager of the Reichsbahn, Dorpmüller, said (paraphrasing): "The year 1933 brought a radical change; economic and political insecurity was replaced by stability. When the German economy showed an upswing, the personnel could be increased again. Men who had served the National Socialist cause, front fighters, and ex-soldiers, received preferential treatment." *Loc. cit.*, p. 41.

In 1937, special promotion or a second promotion was granted to the holders of honorary insignia of the party or to those who had declared their affiliation with it, in one way or another, prior to September 14, 1930. Four thousand

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characteristically, National Socialism has respected the principle of managerial continuity.[74]

The compensation of the mass of personnel has been reduced during the last decade. Previously the trend had been upward. A wage agreement of March 11, 1921 partly stabilized the situation but the general level rose until 1929. In 1931 a downward movement began, and wages were brought back in three steps to the 1926 level.[75] The following table shows the relation of recent wage levels to those that prevailed in 1928 and 1932.[76]

HOURLY RATES OF WAGES FOR RAILWAY WORKERS IN *Reichspfennige*

	1928	*1932*	*1936*
Skilled	92.2	78.3	78.7
Semiskilled	76.2	65.3	67.5
Unskilled	73.8	63.7	64.4

At best, recent rates of compensation have had only a slight edge over those of the depression years.[77] Youth is served; full compensation is allowed at the age of twenty-one, not twenty-four, as formerly.[78] Wage scales are still fixed regionally for numerous operating areas. The scheme of compensa-

persons were affected by this order. Meanwhile, some recruiting was going ahead on a party basis; about 16,000 National Socialist front fighters were taken into the railway system. In addition, 15,000 party veterans, in the period between 1935 and 1937, were credited with five years' service, which would be reflected throughout their lives in compensation and in other advantages.

[74] The high officials of the railroad system, like those in the administrative services generally, are appointed and dismissed by the Führer. Although in principle this applies to all officials in the railway service, in practice it extends down to the lowest step in the highest range only, involving positions paying from 4,800 RM to 8,100 RM.

[75] Dorpmüller, *loc. cit.*, p. 43.

[76] Vaso Trivanovitch, *Economic Development under National Socialism* (National Industrial Conference Board, Inc., New York, 1937), p. 42.

[77] It was said that the Labor Front (*Reichsbetriebsgemeinschaft* 10) collaborated in drafting the Service and Wage Order of May 1, 1934, which underlies the present wage structure. Georg Körner, "Aufbau und Organisation des deutschen Verkehrswesen", *Jahrbuch der nationalsozialistischen Wirtschaft*, herausgegeben von Dr. Otto Mönckmeier (Munich, 1937), pp. 428-9.

[78] Ziche, *loc. cit.*

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tion abounds in bonuses, premiums, and special forms of increment.[79] In 1938, for example, it was reported that 57 per cent of all railway employees were receiving bonuses, premiums or the like.[80]

Most of this, of course, is the mere continuation of the practices of an old and progressive state industry which had been developed in the context of German social legislation. The National Socialist régime, while contracting the proportion of railway workers who have civil service status, has conserved and extended certain elements of security.

Thus the impressive social services of the railway system have been maintained.[81] In the field of social insurance the Reichsbahn participates in part in organizations which serve other phases of national administration; in part it maintains institutions of its own. The railway system itself carries disability and old-age insurance in behalf of its employees and for this purpose a new organization, the *Reichsbahnversicherungsanstalt,* has been developed on the basis of the coördination of the labor pension funds of the several *Länder.*[82] The *Reichsbahndirektionen* carry accident insurance. Compulsory sickness insurance is carried in some twenty-five federated funds (*Reichsbahnbetriebskrankenkassen*). In 1934 the

[79] Kleinmann, "Die sozialen Leistungen der Deutschen Reichsbahn seit 1933", *Die Reichsbahn,* April 6, 1938, pp. 343 *et seq.*

[80] Foremen are so rewarded. Employees receive a loyalty premium at the end of twenty-five years of service; some 27,000 reach this point every year. In addition, seniority premiums are granted periodically; after sixteen years of service, 3 per cent of the basic wage; after twenty-one years, 4 per cent; after twenty-six years, 5 per cent. *Cf.* Kleinmann, "Die neue Dienst- und Lohnordnung der Deutschen Reichsbahn", *Die Reichsbahn,* May 9, 1934, pp. 465-6. Workers with children receive an addition to their basic wage of 6 per cent, with the further added sum of 10 RM weekly for the fifth child and every child thereafter. Ziche, *loc. cit.,* p. 901.

[81] Kleinmann, "Die sozialen Leistungen der Deutschen Reichsbahn seit 1933".

[82] This was accomplished primarily by the law of July 5, 1934, *RGBl* I, p. 577, supplemented by the ordinance of December 21, 1934, *RGBl* I, p. 1273, and the law of December 21, 1937, *RGBl* I, p. 1393. *Cf.* Kuhatscheck, "Die Reichsbahnversicherungsanstalt, die Reichsbahnbetriebskrankenkassen, die Angestellten-, Unfall- und Arbeitslosenversicherung bei der Deutschen Reichsbahn", *Archiv für Eisenbahnwesen,* November–December 1938, pp. 1468 *et seq.*

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Reichsbahn contributed about 85 million RM to the various compulsory forms of social insurance.[83] The yearly contributions to voluntary insurance funds and other benefits amount to about 65 million RM.[84] Outdoor medical service is provided. The railway system, a world in itself, has long carried its panoply of varied social facilities.[85]

In employee relations, the principle of *Betriebsgemeinschaft* —the harmonious collaboration of management and men—has been extended to public activities as well as to industry generally.[86] Its practical effect further blurs the distinction between the civil service and employees who are engaged on the basis of contract. The elaborate unions of the railway service are gone.[87] Militancy is impossible. It is unnecessary

[83] Dorpmüller, *loc. cit.*, p. 44. In addition, numerous voluntary and supplementary facilities are maintained, like the Sickness and Burial Funds for Railway Workers (*Kranken- und Sterbekasse*) and Sickness Benefits for National Railway Officials (*Reichsbahn-Krankenversorgung*).

[84] *Ibid.* In 1937 the Reichsbahn paid 133.7 million RM and the insured 131.3 million for social insurance. Kuhatschek, *loc. cit.*

[85] Over twenty recreation homes and ten homes for children are kept up by the railway system. In 1937 it owned 113,000 dwellings used by its employees and up to that year it had underwritten in behalf of building associations the financing of housing facilities for 66,500 families. The Reichsbahn was even providing annual scholarships for over five hundred gifted boys belonging to large families in its employ. *Cf.* Kleinmann, "Die sozialen Leistungen der Deutschen Reichsbahn seit 1933".

[86] The application to the railways was accomplished under the Act for the Regulation of National Labor in Public Administration and Undertakings, March 23, 1934, *RGBl* I, p. 220. Fritz Ermarth remarks: ". . . The aim of the National Socialist labor legislation is to 'reconcile' and 'harmonize' the interests of entrepreneurs and workers that were alienated from one another through the practices of liberalism and unfettered materialistic individualism (which appeared in its latest stage in the disguised form of Marxian 'collectivism')." *The New Germany: National Socialist Government in Theory and Practice* (Washington, 1936), p. 135.

[87] The unionization of railway workers began in 1884 in the *Verband Deutscher Eisenbahnhandwerker*, of Hirsch-Duncker tendency; the first socialist union appeared in 1896. *Cf.* the excellent history in Karl Winkler, "Die Gewerkschaftsbewegung im deutschen Eisenbahnpersonal", *Archiv für Eisenbahnwesen*, January–February, March–April, September–October 1926. The main socialist railway organization of the early Weimar period, *Reichsgewerkschaft deutscher Eisenbahnbeamten*, was partly discredited in the serious railway strike of 1922; indeed the general labor federation rebuked it because the

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here to examine the nature of the supposedly compensatory scheme of trustees of labor and honor courts.[88] In its application to the railway personnel the new framework involved the elements of consultative "councils of trust" (*Vertrauensräte*) where there are twenty employees or more, regional councils in the main operating districts, and a council attached to the central administration. The grounds of dismissal are reviewable by labor courts.[89]

strike was called while a wage negotiation was pending. Thereafter militancy declined, the rôle of the unions being mainly in collective bargaining, for which the autonomous nature of the system left considerable leeway. Unionization was strong but its structure was complex, being cut across partly by distinctions between civil servants and employees and partly by political tendencies. *Cf.* Baumann, *op. cit.*, p. 355; Winkler, *loc. cit.*, pp. 1121-8. In 1930 the division was roughly as follows:

Railway organizations (classified by tendency)	*Top affiliations*	*Number of votes cast in elections for union councils*
Socialist		
Einheitsverband der Eisenbahner Deutschlands	*Allgemeiner deutscher Beamten-Gewerkschaftsbund*	civil servants, 61,586 workers, 212,732
Christian		
Gewerkschaft Deutscher Eisenbahner	*Deutscher Beamtenbund* *Deutscher Gewerkschaftsbund*	civil servants, 63,271 workers, 60,034
Democratic (Hirsch-Duncker)		
Allgemeiner Eisenbahner-Verband	*Gewerkschaftsring Deutscher Arbeiter-, Angestellten-, und Beamtenverbände*	workers, 22,814
Neutral		
Zentralgewerkschaftsbund Deutscher Reichsbahnbeamten	*Deutscher Beamtenbund*	civil servants, 99,916
Gewerkschaft der technischen Eisenbahnbeamten	" "	15,566
Gewerkschaft Deutscher Lokomotivführer	Independent	53,966

[88] *Cf.* Nathan A. Pelcovits, "The Social Honor Courts of Nazi Germany", POLITICAL SCIENCE QUARTERLY, September 1938, vol. 53, pp. 350-70. On the pattern of labor relations and the Labor Front generally, *cf.* Helmut Egloff, "Gestaltung des Arbeitsverhältnisses", and Franz Mende, "Arbeitsfront und Sozialpolitik", *Jahrbuch der nationalsozialistischen Wirtschaft* (Munich, 1937), pp. 50 *et seq.*, and pp. 87 *et seq.*; also on the formation of the Labor Front, Fritz Poetzsch-Heffler, Carl-Hermann Ule und Carl Dernedde, "Vom Deutschen Staatsleben (vom 30. Januar bis 31. Dezember 1933)", *Jahrbuch des öffentlichen Rechts*, vol. 22 (Tübingen, 1935), pp. 164 *et seq.*

[89] In cases of dismissal, moreover, employees of the Reichsbahn who have served more than a year are entitled to four weeks' notice; if employed more

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(4) *Administrative autonomy in the setting of National Socialism.* In concluding the survey of the organizational features of the German railway system, a word should be said regarding the place which the theory and practice of National Socialism hold for the autonomous administration of public enterprise. The régime, clearly, has had no wish to alienate its economic holdings; its protective nationalism, alone, would probably have precluded such a step even if its condition had not been that of a virtual state of war. It has been prepared to make proud parade of its railway system but likewise to subordinate it.[90] But the impressive fact has been that even so monopolistic and jealous a régime has seen administrative reasons for the retention of autonomous forms and procedures.[91]

than ten years, the period of notice is six weeks; and if more than fifteen years, three months; if more than twenty years, six months. *Cf.* Schrag, "Grundlegende Begriffe und Bestimmungen des Deutschen Arbeitsrechts unter besonderer Berücksichtigung der Verhältnisse bei der Deutschen Reichsbahn", *Die Reichsbahn*, June 1, 1938, pp. 563-70.

[90] Speaking at Nuremberg on December 8, 1935, on the occasion of the centennial of the first operation of a steam-driven train in Germany, Adolf Hitler paid tribute to national ownership in these terms: "We do not deny the tremendous achievement of capitalistic development of the past century, but we offer in the German railway system an impressive demonstration of the possibility of founding a model and unparalleled enterprise on a different economic basis. This realization is of immense value in that it teaches us to apply experiences and the conclusions thus gained in other directions also, not merely for the sake of doctrine but for considerations of a sober and physical nature." *New York Times*, December 9, 1935.

[91] The comment of Ludwig von Köhler may be cited as typical: "The leadership principle and the coöperation of the National Socialist German Workers Party (NSDAP) are intimately woven into the fabric of every self-governing body. . . . National Socialism . . . stresses articulation of State and self-governing bodies and therefore restricts home rule. Nevertheless, it has considerably increased the number of self-administrative agencies in order to enable organically grown bodies to express an autonomous administrative will, provided that will corresponds to the laws and the aims of the national leadership. As examples of this administrative technique may be cited the foundation of the Unternehmen Reichsautobahnen, vesting it with autonomous legal personality of public law, or the creation of the Academy for German Law by the act of July 11, 1934 (*RGBl* I, p. 605)." *Grundlehren des Deutschen Verwaltungsrechts* (Stuttgart and Berlin, 1936), p. 114. *Cf.* also Ernst Forsthoff, "Nationalsozialismus und Selbstverwaltung", *Deutsches Verwaltungsrecht* (Munich, 1937), p. 176; Otto Koellreutter, *Deutsches Verwaltungsrecht* (Berlin, 1936), p. 61. For an indication of a similar tendency in Italy to

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This tendency may be traced in the consideration of finance and other phases of operations, to which attention will next be given.*

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continue to use semi-autonomous bodies, *cf.* G. Lowell Field, "Forms of Organization of Italian Public Undertakings", *Annals of Collective Economy*, Geneva, 1934, vol. 10, pp. 1-47.

* The second installment of this article will appear in a later issue of the QUARTERLY.—ED.

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HOPES AND FEARS OF AN AMERICAN-GERMAN WAR, 1870-1915 I *

WHEN the sea power concept, developed by Mahan, was first embraced by the several Great Powers, it did not at once alter the established constellation of the nations. But by the time the idea, seized upon by various groups and interests in the different countries, had taken full effect, and the navies conceived in its terms had actually been constructed, the "diplomatic revolution" was also completed.

Far too often this "revolution" has been viewed without careful consideration of the influences exerted by the creation and existence of the several navies and the policies of their greatly enlarged personnel. As a matter of fact, after they had turned to the sea, the new maritime Powers, for diplomatic and "practical" purposes, had of necessity to choose or accept new enemies, different from those of the past which had been largely the enemies of the armies. But the armies, in turn, could not give up their enemies, for the latter were all too real. Hence it happened that, after the naval revolution, the armies and navies in several countries, notably Germany, were at bottom envisaging different foes and preparing divergent plans for future combats. The effects of this internal conflict were visible in Germany by 1905. For a time, German navalists, with the Kaiser at their head, had hoped to make friends with the Powers in possession of the "secondary navies", France and Russia, as against England, "the Mistress of the Seas". Attempts to realize this hope reached their climax in the policy of Björkoe in 1905. But they had all proved futile by the end of that year; Germany not only had not lost her old enemies but had rather firmly acquired two additional foes, Great Britain and, somewhat less readily discernible, the United States.

* Dr. Vagts's manuscript was submitted for publication before the outbreak of the present war in Europe.—ED.

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I

Prior to the diplomatic revolution, in the eighteen-seventies, George Bancroft, historian, diplomatist and one-time Secretary of the Navy, formulated the harmony of American-German relations by declaring that "our foreign political interests almost always run parallel with those of Germany."[1] But by that time certain interests on either side of the Atlantic had already indicated that competition and conflict indeed existed between the Reich and the United States. Even before the agrarian competition became acute, the navies of both countries, as their more far-reaching arm, were in competition. As between them, it is hard to say which felt or sought this rivalry first. After 1871 as well as before, when there was as yet no *Reichsmarine* but only a navy of the *Norddeutsche Bund*, both were eager to acquire naval stations in the Caribbean or Central America.[2]

In a manner somewhat complimentary as well as suspicious, the Report of the Secretary of the Navy for 1875 included statements of Admiral Porter, in which the latter called his own fleet a much neglected and consequently decaying instrument which ought to look to the navy of the Reich for an example of an efficient and successfully striving force. This new fleet would give a great weight to the German Empire in European questions and would enable it to follow a policy which might collide "with some of our most cherished ideas." "Here the Monroe Doctrine is meant", Bismarck's minister at Washington, von Schlözer, explained for the benefit of Berliners who might not readily recognize the Doctrine which had become such a doctrine only recently. "The Admiral knows much better than any of the others that we are not in

[1] De Wolfe Howe, *Life and Letters of George Bancroft* (New York, 1908), vol. II, p. 246.

[2] Otto Graf zu Stolberg-Wernigerode, *Deutschland und die Vereinigten Staaten von Amerika im Zeitalter Bismarcks* (Berlin, 1933), pp. 229 *et seq.*; Admiral Reinhold von Werner recommended buying Curaçao from the Dutch and turning it into a German naval station. *Erinnerungen und Bilder aus dem Seeleben* (Berlin, 1880), pp. 304 *et seq.*

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the least inclined to hurt these Monroe ideas. But he has used this expression in order to spur on."

This was the time when the *Virginius* affair was as yet unsettled and Schlözer wrote that, with the United States navy in such a dilapidated state, Grant "would find it hard to proceed from the hostile language which his Cabinet entertains through the press, to real action." [3] Bismarck himself thought this state of the United States navy, "even if painted too black with the intention of moving Congress to grant moneys," was of considerable moment in judging the policy which the White House had in mind toward Spain, "the more so, since the Spanish navy, about which the Admiral is silent, is quite an imposing one." His conservative sympathies probably overestimated the value of the Spanish fleet, as did those of most conservatives, and with even less justification, on the eve of the War of 1898. Merely for Schlözer's own information the Chancellor wrote that the *Reichsmarine*, particularly in respect of its organization, was still in the stage of experimentation. Venting his grudge against the head of the young navy, von Stosch, who was a general but also a Liberal, Bismarck added: "Whether, particularly in the highest positions, the desirable professional knowledge and ability are available, may be questioned. At any rate, the German navy in the cases which have occurred has left much to be desired on the part of the *Auswärtiges Amt*." [4]

Despite the appearance of such grudges, actual American-German conflicts seemed far away to the diplomats. On the occasion of earlier rumors that Spain intended to cede Puerto Rico to Germany, Schlözer had been able to tell reporters that his country's "peace policy, our aversion against the outdated colonial policy and other reasons would always keep us from aspiring to overseas possessions." [5] This "always" had lasted only some five years, when an American-German rivalry broke out over an object of slight economic significance—Samoa—

[3] Schlözer to Bismarck, Jan. 21, 1875. Archives of the Auswärtiges Amt.

[4] Bismarck to Schlözer, Feb. 9, 1875. *Ibid.*

[5] Schlözer to Bismarck, Aug. 22, 1874. Archives of the Ausw. Amt; *New York Herald*, Aug. 21, 1874.

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in a distant region, the southern Pacific. The American navy had already interested itself in this region (since 1872 at least) and Germany, following her traders with her flag, was supposed to have a stake here also. This tiny object of colonialism, navalism and protectionism was the first to give rise to a serious notion of an American-German war. Strangely enough, one of the first discussions of such a possibility took place between two representatives of the political age which preceded, and on the whole denied, *Weltpolitik*, though *Weltpolitik* at last produced this war — and the plans, fears and hopes accompanying its genesis. This discussion may be found in two letters of Bismarck and Carl Schurz, written, though not exchanged, during the Samoan crisis of 1889.

After the naval officers, the consuls and the traders of the two Powers had clashed in Apia, and the governments had allowed their peoples to become wildly excited, and Congress had even granted war credits, Schurz sent a letter to the German minister in Washington, who forwarded it at once to the Chancellor; in this, Schurz painted a picture of what such a war would amount to.[6] On one side were the best army in the world and an efficient, rapidly developing navy. On the other side was a nation of over 60 millions, without a large standing army and even without a considerable fleet of battleships, but with a plethora of money, with inexhaustible (Bismarck's marginal note: "?") supplies of all kinds, with an uncommonly inventive spirit of enterprise, with a patriotism willing to make the greatest sacrifices, actually unassailable in its territorial domains—the one great Power with an absolutely free hand in foreign affairs. The belligerents would be separated by the Atlantic. This, Schurz maintained, could not lead to a war of quick decisions. There would be no war on land and at first no great sea battles. But the United States

[6] Schurz to Count Arco, Feb. 3, 1889; Arco to Bismarck, Feb. 5. Ausw. Amt. An English translation of Schurz's letter is in *Speeches, Correspondence and Political Papers of Carl Schurz*, edited by Frederic Bancroft (New York, 1913), vol. 6. For the whole complex see Alfred Vagts, *Deutschland und die Vereinigten Staaten in der Weltpolitik* (New York, 1935), pp. 656-7; Stolberg-Wernigerode, *op. cit.*, pp. 286-7.

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would send out a swarm of cruisers to all the oceans (Bismarck: "We also") in order to destroy German trade. Germany would answer with similar measures, even though under less favorable conditions, since the overseas trade under the American flag was relatively small (Bismarck: "America's merchant marine has 2.8 million tons, ours 1.3!"), and the highly developed coastal shipping was more protected. Thus the two nations would for a long time strive to damage one another, only to drive their ocean-borne trade into England's hands; the latter would certainly try to preserve a neutrality (Bismarck: "?") so profitable to her. Perhaps from the German side attempts would be made to bombard American coastal territories (Bismarck: "Certainly!"); the defective harbor fortifications seemed to invite that, even though American inventive genius (Bismarck: "!") might prepare many surprises for the attacking party. Whether it would come to such attempts was dubious, since an alliance with France would urge itself upon America (Bismarck: "?") and hold the German naval force in play in European waters (Bismarck: "And the English [naval power]?"). But even burning down New York, Philadelphia and Boston would bring no decision, and during the second year of the war America would also have her battleships (Bismarck: "probably some in the third"), probably of a totally new construction. Altogether this would become a long fight of exhaustion between Powers, one of which is nearly inexhaustible (Bismarck: "and all this for Sewall [U. S. Consul at Apia] and Leary [U. S. naval officer]!").

Bismarck answered, not Schurz but his minister at Washington, obviously improvising at Friedrichsruh and without advice from the General Staff, whose directors were almost as much opposed to such a war as Schurz and his Liberal friends in Germany.[7] His state of mind was betrayed in his marginal note on a recent report from Washington about the nervousness (*Reizbarkeit*) of the Americans: "reizbar sind wir

[7] Vagts, *op. cit.*, pp. 653, 665; Alfred Graf von Waldersee, *Denkwürdigkeiten* (Stuttgart, 1923), vol. II, p. 33.

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auch", we also are excitable.[8] The most powerful and forceful statesman of the age betrayed, in the well-kept secrecy of the diplomatic correspondence of this time, how much even he was caught by the occidental neurasthenic nihilism of that epoch against which the lonely Nietzsche was clamoring in the eighteen-eighties. "The worst is, however, that the strength to suspend any doing whatsoever, to *not* react," wrote Nietzsche, "has grown most seriously ill under the influence of weakness: one reacts at no time more quickly than at the time when one should not react at all. . . . The strength of a personality is demonstrated in waiting and seeing and in postponing reaction. . . . Will is weak: and the recipe for avoiding silly things would be to have a strong will for doing nothing."[9]

The Chancellor admitted that there was much truth in the picture Schurz had drawn of an American-German war.

> Whether the means, of which America would dispose in the case of a war with a European power, would be inexhaustible, I will leave undecided, and I doubt if a strong fleet of battleships with trained crews could be improvised in a year or two, and I suppose that the damage, which we could do to the American commercial emporiums and by destroying the American merchant marine, would be an appreciable one for even the richest country. . . . Also the view, that in a battle with America we should remain alone and would besides have to reckon certainly with French antagonism, would hardly prove to be right. On the contrary, I believe that an American-French alliance would certainly be opposed by a German-English one. . . .[10]

[8] Vagts, *op. cit.*, p. 655.

[9] *Der Wille zur Macht* (Leipzig, 1930).

The whole complex question of the interdependence of neurasthenia as a consequence of business life and imperialism remains to be elucidated. The medical diagnosis and treatment of neurasthenia—the concept was introduced by George M. Beard—began at about the same time that the new cycle of imperialism was started. Did some go to the doctor for treatment and relief and others to imperialism? For the American case see Beard, *Nervous Exhaustion* (New York, 1880), and *American Nervousness: Its Causes and Consequences* (New York, 1881).

[10] Vagts, *op. cit.*, p. 658.

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These discussions between the Civil War general, Schurz, and the old *Landwehr* officer, Bismarck, who indulged in the treatment of military issues as often as the military trespassed on diplomatic controversies, were rendered academic by further developments in the Pacific quarrel. The Samoan question was peacefully resolved, though not before it had, as R. L. Stevenson wrote with a poet's insight, "indirectly, and by a process still continuing", "founded the modern navy of the States." [11] In that status, if not on an even less realistic plane, the concept of an American-German war remained until after the Spanish-American War of 1898. As long as Bismarck remained in office, and under Caprivi as well, an American-German conflict was considered in Berlin as involving also an American-English conflict. Therefore, as Bismarck had told Salisbury, England ought to find "in the growth of a rivaling sea power a further encouragement for strengthening her own navy in order to be equal to all eventualities." [12]

After the Samoan issue had become insignificant again to the great majority in the three Germanic nations involved, only Mahan and a few naval people and colonial enthusiasts kept alive the memory of the incident, insisting that it was

> trivial apparently . . . nevertheless eminently suggestive of European ambitions. America then roused from sleep as to interests closely concerning her future. . . . All over the world German commercial and colonial push is coming into collision with other nations. . . . It is noteworthy that, while these various contentions are sustained with the aggressive military spirit characteristic of the German Empire, they are credibly said to arise from the national temper more than from the deliberate policy of the government, which in this matter does not lead, but follows, the feeling of the people,—a condition much more formidable. [13]

[11] *A Footnote to History* in *Works* (South Seas ed.), vol. XXVI, p. 292.

[12] Vagts, *op. cit.*, p. 669. Feb. 1, 1889.

[13] "The United States Looking Outward", August 1890, reprinted in *The Interest of America in Sea Power, Present and Future* (Boston, 1897), pp. 7 *et seq.*

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Mahan clearly identified "people" with the several imperialistic alarmists in Germany and almost as clearly expected the American "people" to follow suit.

As far as its mass appeal was concerned, however, there was a certain weakness in the sea power concept: it was stated in a manner too indeterminate; it was not specific enough with respect to future and possible enemies of the several sea Powers. With all its use of historical illustrations, even though the examples were increasingly drawn from the nautical history of the great naval Powers, the sea power doctrine was decidedly marked, before and after 1900, for the Americans and Germans, though not as much for the British, by a strongly non-traditional character. It was a concept far more "historicized", crowded with historical "reasoning", than the mind of the American people was prepared for at that time. There were not many who had eyes to see through the surface, for the logical consistency of imperialism and navalism was as little probed by our fathers as the question whether or not they paid in the end; the anadyomenic British Empire was, however, fairly visible as the embodiment and example of successful sea power. To have a navy *for* something called sea power, then, was hardly definite enough to persuade great masses in the United States and Germany; such a navy must also, and even more, be *against* someone; an enemy must be found.

The Tirpitz navy was originally conceived against the traditional enemies of the Reich, those of the army as well, namely, France and Russia; though there were a few early voices in the Reich urging that it be built against the United States first and England later.[14] And after Spain, who was

[14] An anonymous member of the Centre party, printing in the Munich *Allgemeine Zeitung*, October 24, 1897, before the introduction in the Reichstag of the first great German Naval Bill, views which could not be published in the party press, gave the future German navy the task of abolishing the Monroe Doctrine and assisting Catholic Spain actively in the impending war with the United States. The article was enclosed with a despatch from the United States Minister to Denmark, John E. Risley, to John Sherman, Secretary of State, October 26, 1897, as "fairly illustrating the spirit of hostility to our Government which so largely exists in Germany. It is probable that the writer

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to be the enemy of the United States navy? An enemy virile and reckless enough in its policies to make all one's own demands appear reasonable? Such an enemy had been wanted by American navalists like Theodore Roosevelt or Dewey as early as 1897, when the latter exclaimed: "It is indecent to fight Spain anyhow. Now, if France would come in too, we could save our faces, but best of all if Germany would come in. If only Germany could be persuaded to come in." [15] The expected enemy was found in Manila Bay in the summer of 1898 when the American and German admirals, Dewey and von Diederichs, clashed while the British commander present managed to keep up a benevolent attitude toward both. In spite of all that the diplomats did, after Manila, to assuage the hostilities of their navies,[16] the latter did many things to keep their antagonism alive, and they were, to a certain extent,

desires to secure large appropriations for the army and navy and seeks by such articles to work up public sentiment to that end." Archives of the Department of State.

[15] William Franklin Sands, *Undiplomatic Memories* (New York, 1930), pp. 25 *et seq.*; for Roosevelt see Joseph B. Bishop, *Theodore Roosevelt and His Time Shown in His Own Letters* (New York, 1920), vol. 1, p. 84.

[16] See the following report of von Holleben, April 20, 1900, among other testimony (Vagts, *op. cit.*, pp. 1395 *et seq.*, for others): The Dutch minister, Baron Gevers, had told him that during his recent visit on board the U. S. S. *Kearsarge* the captain of the ship "in a bluff and off-hand manner and in a large society had expressed himself that the next war the United States would have to undertake would be directed against Germany [Kaiser's marginal note: 'Na? Na?']. Germany was the most dangerous competitor of American trade, Germany like the United States was pursuing a policy of expansion, and therefore it was only natural that sooner or later the forces of the two would collide in space, and better earlier than late, before Germany's sea power became strong." The source of information naturally forbade taking official steps, Holleben realized, but he was convinced "that the views expressed by that naval officer are shared by many here, particularly in the army and navy. I am also of the opinion that the similar utterance which Admiral Dewey is said to have made was actually made by him, if perhaps in a somewhat different form. In my opinion Mr. Dewey is by no means the plain dealer [*Biedermann*] many think he is. Rather is he sometimes very awkward. There runs through the more educated classes of the American people a vein of jealousy against Germany, mingled with honest admiration, which, should it so happen, would not refrain from giving drastic expression to it." On May 11 the *Auswärtiges Amt* sent the report to the *Reichsmarineamt* for its information. Archives of the Ausw. Amt.

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assisted by army officers on either side who had turned their attention overseas. It is probable that the American navy was even more active in this respect than the German, if only for the reason that the American navy needed the enemy, Germany, somewhat more than the German navy needed the enemy, America, especially after the Anglo-German antagonism had become fixed.

Imitating the enemy chosen for the future war and improving on his lines, surpassing him if possible, engaged a large part of the political and technical efforts of the American and German navies after 1898. Instead of proceeding from the requirements of the supreme safety of the home bases, their competition assumed forms, though not purposes, which were commercial rather than military—commercial in the publicity aspect as well as in the competition for objects of imperialist control. Both navies were convinced that they had to make and keep their peoples "navy minded"; hence their interest in the "navy leagues", pressure groups useful against the sometimes hesitant parliamentarians or governments; hence the wide and constant use they made of newspapers, which left far behind that traditional reticence maintained still by the armies in relations with the press, though the latter could no longer be called a strictly "silent service" either.

The navy league was originally an English institution of the eighteen-nineties (1894), destined to bridge the chasm between the service and the public, with a traffic of ideas that traveled largely in one direction, from the service to the public, though there also was some interchange. For instance, civilians sometimes proposed territorial acquisitions and other activities overseas or took the initiative in urging big naval increases, with the purpose, perhaps, as in the case of a proposal of the *Flottenverein* in 1901, of stimulating lagging industry, lifting the stock exchange quotations, saving many "values", and effecting a stabilization of the market.[17] The British Navy League was imitated by the German *Flotten-*

[17] Eckart Kehr, *Schlachtflottenbau und Parteipolitik, 1894-1901* (Berlin, 1930), pp. 168 *et seq.*, 457.

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verein. This organization, itself in many ways a subsidiary of the *Alldeutscher Verband*, was founded in 1898, before the outbreak of the Spanish-American War. Both were imitated by the French, Italian, Japanese and other naval leagues and by the American Navy League, as a comparative late comer, after 1902, which "ought to bring to the aid of the navy a stronger public opinion"—as the Navy Department hailed it.[18] Like the others, the Navy League in the United States co-operated with the Navy Department, whose rôle in the founding of the League remains to be clarified.[19] It obtained from the several bureaus of the Department, in large part, its necessary "information", "knowing that you appreciate the work we are doing", as it wrote on one occasion to the Office of Naval Intelligence.[20] An American description of the functions of the *Flottenverein*—"disseminating information in regard to the Navy throughout the German Empire, with a view to obtaining liberal appropriations for an increase of that service"[21]—fits the various navy leagues and their activities for the other services as well.

The navy departments followed the activities of the several leagues almost as closely as those of the navies themselves. The *Flottenverein*, in some of its propaganda material, duly submitted by the United States naval attaché in Berlin, overestimated the tabulated strength of the United States and put it third among the naval Powers of the time; thereupon the chief of the Office of Naval Intelligence at Washington took care to point out to the Secretary of the Navy, as well as to other persons and offices, that this was placing the United States navy too high and was therefore

[18] Lieutenant-Commander J. H. Gibbons, U.S.N., "Navy Leagues", *North American Review*, May 1903. Gibbons was an officer in the Naval Intelligence Office. Robert Means Thompson, *The Navy League, Its Founders and Its Work* (1916).

[19] On April 12, 1907, Captain C. D. Sigsbee, head of the Naval Intelligence Office, instructed the United States naval attachés in Berlin and Paris to report on the Italian and French naval leagues and their activities. Natl. Archives.

[20] Letter of Feb. 29, 1904. Natl. Archives.

[21] Memorandum by Sigsbee for the Secretary of the Navy, Nov. 23, 1901. *Ibid.*

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somewhat misleading as the older, obsolete ships which are not considered effective in the German Navy are counted in as a part of the effective strength of the United States. . . . This propaganda is for the purpose of creating sentiment for an increase of the Navy, and consequently the German Navy is underestimated in order to persuade Germans to vote for an increase in order that it may be equal to that of the United States. All these publications end with the sentence: "We must increase our Navy." [22]

At the annual meeting of the *Flottenverein* in 1901, a Capt.-Lt. von Veltheim spoke about the necessity for German cruisers to be stationed in Central America, the South Seas and China. The German position in Central America, he declared, was particularly menaced "by the great war of competition going on with the United States, which country is also making great efforts to increase its navy." "If the German population is to remain in those countries," von Veltheim argued, "the German fleet must be of such strength as to be able to say to the Americans 'Hands off!' (The Speaker here received strong applause)." After his attention was drawn to these utterances by reports and by a private letter from Beehler, Captain Sigsbee submitted a memorandum to the Secretary of the Navy in which he stated:

It would be a great mistake for Germany to go to war with us. She would lose her transatlantic trade even by the threat of such a thing and it would be in every way disastrous for the German Government. So it is not at all probable just now but 10 or 20 years from now it may be.

The only way to prevent it is for our navy to be so strong that no one will dare to go to war with us. The Americans are not

[22] Sigsbee's Memorandum of Nov. 23, 1901; Memorandum by Sigsbee for the General Board, Jan. 20, 1902; Memorandum by Sigsbee for the Naval War College, Hon. G. E. Foss (Chairman of the Naval Committee of the House of Representatives), Bureau of Navigation, General Board, etc., about the comparability of the German and American naval strength. According to Beehler, Naval Attaché in Berlin, "the German strength actually built is effectively 50% . . . greater than that of the United States. All German ships are kept up to date." It was said to be totally misleading that the United States Bureau of Construction and Repair in its last annual report had claimed a material superiority for the United States. Natl. Archives.

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seeking to conquer the world to gratify any personal ambition [obviously the writer was convinced the Kaiser would] and our people would not go to war except for the most thoroughly righteous cause. Nothing so much astonishes the Europeans as the fact that Cuba has not been annexed.

The increase of the Navy is the theme of the German Navy League. It is even more necessary from every standpoint of Germany's argument for us to have a strong navy. All that they say applies to our conditions. We have just the same reasons for the need of a strong navy as has Germany, only doubly so, not merely because of our population being nearly double and our territory ten times as great but our sea coast is a hundredfold greater and our commerce though not carried in our ships, because we do not allow our flag to fly on foreign built ships even if we own them, is ten times greater, for the reason that most [!] of the German commerce is equally ours as it comes from us.

Since the German navy had gone beyond its budget on several items, Sigsbee proposed that, just as he had demanded that something more be done with respect to torpedo boats, something should now be done with respect to an increase of the personnel, in order to get even with the Germans in this regard. Germany, for instance, had 667 officers below the rank of lieutenant,

whereas we have but 230. . . . The Germans have 504 [cadets] and we but 388. . . . With 75 million Americans against 50 million of Germans, and ten times the sea interests I do not understand why Germany should be used to fix a limit. We should be at least twice as strong. Double Germany in sea power, for Germany is an inland country of Europe and not a seafaring country except on the coast, for several hundred miles, while we have several times ten thousand miles of coast.

We are also deplorably behind in torpedo service, but I do not seem to be able to express it strongly enough. I am sometimes afraid that I have said too much but you will let me know if I go too far and ascribe it to my zeal for our service.[28]

[28] Confidential Memorandum for the Secretary of the Navy, Nov. 16, 1901, Natl. Archives; see also Office of Naval Intelligence, *General Information Series* for the year 1901, p. 347, on German Navy League.

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On the technological side there was also imitation of, and if possible improvement beyond, the competitor and future enemy. As early as the period between armistice and peace in 1898, the United States Naval Attaché in Berlin, Lt.-Commander Barber, recommended more emphasis on torpedo boats in the United States navy because they were considered rather highly in the *Reichsmarineamt* where he had just had a talk on this type of ship.

> Considering that the Germans are likely to be our next antagonists and that they will be "foemen worthy of our steel" and not Spaniards and that "imitation is the sincerest form of flattery" and moreover that they are undoubtedly looking at us with an eye to business, we cannot do better than imitating their very thorough system so that they can see what they will have to encounter on our coast when they attempt to attack it. Time was when this latter statement would be laughed at from Maine to Texas; but that time has gone by. No lesson of the war has been more instructive than the terror along our coast created by Cervera's and other possible Spanish fleets; a terror which must have caused much embarrassment to the Navy Department, already overwhelmed with the preparations of our sea going ships and which resulted in the necessary purchase of a lot of mongrel craft at an expense which would probably have furnished a splendid torpedo boat defense.[24]

American-German naval relations were conceived homeopathically, on the principle of *similia similibus curantur*, with the difference that, in this case, the remedial doses had to be as large as could be obtained. The history of their development might well be called a *Dissertatio de curatione per similia*. Wherever comparison of any kind, however far-fetched, seemed possible between the two navies—their policies, their technological problems, their history—it was drawn by offices and officers of the two navies. German naval writers repeatedly told the story of the death-dealing blockade of the South as a warning to Germany that it would be equally blockaded in

[24] Barber to the Navy Department, no. 130, Oct. 1, 1898. Natl. Archives. Among this "mongrel craft" was a destroyer built by and bought from the Schichau Works at Elbing, on the very eve of the war with Spain.

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a future war, without mentioning the alternative German policy which would be to avoid a blockade altogether.[25] If something was tried in Berlin to attract the German inland youth to the naval service, some one in the American naval service suggested that similar means be employed to draw sons of the non-seafaring Middle West into the navy.[26] German naval publicity on the Kaiser Wilhelm Canal more than once reminded American naval men of their trans-Isthmian Canal; to them the German "arguments are of special value in regard to the construction of the Nicaraguan Ship Canal. The ability to concentrate the German Navy in either the Baltic or North Sea is similar to the strategic importance of the Nicaraguan Canal for the United States Navy."[27] A German pamphlet on the Kaiser Wilhelm Canal was submitted to the Secretary of the Navy because "in view of the probable construction of the Nicaraguan Canal, [it] would be of interest to the United States government. It is intended to show that the Canal will, in time, pay for its own construction."[28] Making the navy a paying proposition, a *rentabel* thing, was, of course, one of the

[25] Kapitän zur See Alfred Stenzel, "Die Flotte der Nordstaaten im Sezessionskrieg", *Beiheft zum Militär-Wochenblatt*, 1894; Nauticus, *Beiträge zur Flotten-Novelle 1900* (Berlin, 1900); Nauticus, "Die Blockade der nordamerikanischen Südstaaten", in *Jahrbuch für Deutschlands Seeinteressen*, 1900, pp. 89 *et seq.* Nauticus is usually identified with Professor Ernst Levy von Halle, a Jewish professor who supplied most of the economic argumentation for the Tirpitz navy.

[26] Beehler submitted to the Navy Department (no. 433, Sept. 13, 1900) a copy of *Ueberall*, a magazine of the *Flottenverein*, which "has exerted a powerful influence in Germany for the benefit of the Navy. Its influence has rallied many volunteers from the interior of the country to serve in the Navy and these men have proven to be in some respects better than the sea-faring population who are obliged to render their compulsory military service in the Navy. This is similar to the experience we have had with recruits from the West for our Navy and the difficulty we now experience in getting men for the Navy may be overcome by fostering such a publication or a Navy League in the United States." (Natl. Archives.) A report of Beehler's (of April 21, 1900. Natl. Archives) about the *Reichsmarineamt's* plan to send a torpedo boat division up the Rhine "to make the Navy popular in the Interior" seems to parallel Rhine and Mississippi.

[27] Beehler to the Navy Department, Feb. 10, 1900. Natl. Archives.

[28] Office of Naval Intelligence to the Secretary of the Navy, Nov. 21, 1901. Natl. Archives.

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great arguments constantly used by Tirpitz with the Reichstag parties. The justification of the big German naval program of 1900, the argument for this increase, was submitted to Washington by the naval attaché in Berlin. In common with many other naval men he thought that "the arguments and reasons for the increase of the German Navy apply with even greater force for the increase of the United States Navy, and . . . the interests of the country and the Navy will be promoted by showing how the German Navy is to be increased." [29]

When American-German relations became calmer, harmonization formulas and gestures were brought forth and applied by the two navies. Parts of one fleet were fêted by the other. But generally the harmonization formulas were so conceived that they did not obstruct the continued building of the two navies. For example, according to Mahan's anti-Socialist harmonization formula, armaments were not a provocation of war but rather an insurance of peace, and the martial spirit that went with it was the only thing to cope "with the destructive forces which from outside and from within threaten to submerge all that the centuries have gained." [30] When in 1901 the Kaiser, as a conciliatory and complimentary gesture, ordered a private yacht for himself to be built in an American shipyard, the Navy Department was helpful in placing the order, and the American naval attaché in Berlin wrote home that "in view of the recent misconstructed stories of the *Vineta* [31] and that Germany is preparing for war with the United States, it would be well to encourage everything that may tend to improve existing friendly relations so much threatened by Yellow Journals. The German Navy is being built up to maintain peace and for that reason the United States Navy should also be most powerful according to Ma-

[29] Beehler to the Navy Department, Feb. 10, 1900. Natl. Archives.

[30] Harold and Margaret Sprout, *The Rise of American Naval Power* (Princeton, 1939), p. 216.

[31] The movements of the S. M. S. *Vineta* in Venezuelan waters at the time were much suspected by Americans. For details see Vagts, *Deutschland und die Vereinigten Staaten*, pp. 1471 *et seq.*

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han's teaching of the lessons of History." [32] The Kaiser and the American naval attaché agreed on the peace insurance formula, in a talk on naval technical art at Potsdam, toward the end of 1901. The latter said that "after all war was becoming so terrible that no nation will engage with another prepared Navy. This makes the Navies the best Peace Conferences." The Kaiser remarked: "That was Mahan and probably correct." After that agreement Beehler took occasion to express his gratitude for the freely given permission to inspect German naval yards and reported the Kaiser as saying: "He would give me anything I wanted and it would afford him great pleasure to still further refute the silly absurdities of the 'Yellow Press' that desired to create unfriendly feelings." [33]

But conciliatory gestures must not be allowed to go too far; they might undermine the *raison d'être* of a navy or an army. And Germany was too good an enemy to let slip, particularly in a year when Congress had declined "to go forward in building up the navy." [34] The fateful *attractio similium* was not permitted to lapse. Jules Cambon, the French Ambassador, reported in May 1901, from Washington, that on every occasion Dewey's saying of 1899 [35] that "the first war of the United States would be with Germany" was repeated. "One does not shrink from saying that within a few years one will

[32] Beehler to the Navy Department, May 28, 1901. Confidential Natl. Archives.

[33] Beehler to the Navy Department, Dec. 3, 1901. Natl. Archives.

[34] Theodore Roosevelt to Henry Cabot Lodge, March 27, 1901. *Selections from the Correspondence of Theodore Roosevelt and Henry Cabot Lodge, 1884-1918* (New York, 1925), vol. I, p. 484.

[35] For these utterances by Dewey see *Vagts, op. cit.*, pp. 1353, 1385. Shortly after they had been made and denied the Emperor spoke of these utterances to the United States naval attaché in Berlin as of newspaper accounts which he had not believed. (Beehler to the Navy Department, Telegram, Aug. 11, 1899. Natl. Archives.) A word by Rear-Admiral H. C. Taylor that in the spring of 1907 a conflict between the United States and Germany would break out, after the latter had acquired the Dutch possessions in America and a number of Latin-American republics had become ripe for picking, also made the international round in 1902-3. See, e.g., *Washington Post*, Aug. 6, 1902; *Revue de Geographie*, t. 52 (1903), pp. 241 *et seq.*

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be in a position to fight the German Navy victoriously." Cambon himself thought that these were words too provoking to let circulate: "It would be childishness to believe in war today, but it is a bad sort of gambling even to speak of it, for, as Bismarck said, by painting the devil on the wall one makes him at last appear." [36] In the autumn of this somewhat conciliatory year in American-German relations, Captain Sigsbee suggested to the Secretary of the Navy

> that disinclination to quote the increasing naval power of Germany in public arguments bearing on the increase of the United States Navy, works to the disadvantage of the United States. This Office [of Naval Intelligence] believes that Germany in the expansion of her commerce and in the corresponding increase of her Navy holds this country in view as her most dangerous competitor for future trade and is directing her energies accordingly. . . . In comparing the necessities of the United States with the necessities of Great Britain and Germany it may be admitted at once that the United States in her present condition of trade and commerce, and in her comparative geographic isolation need not attempt to equal Great Britain in naval power, but in drawing for comparison on German conditions, which we may logically and fairly do, we may find our best arguments for a building policy for the United States.[37]

It may be maintained that Sigsbee's office was after all small and subordinate, with but little influence on policy shaping, which was then becoming increasingly the function of the General Board (founded after the Spanish-American War); however, it should be remembered that a great deal of the information and apparently not a few of the tendencies apparent in the resolutions of the Board, of which Sigsbee himself was a member, and in the decisions of the Secretary of the

[36] Cambon thought that the rudeness of forms which the Germans had carried over into the field of public relations "astonishes the Americans and makes them disaffected as they are accustomed to being a little spoiled. The resentment of Admiral Dewey arises from nothing else, the German fleet at Manila failed to show him quite enough deference." *Documents diplomatiques françaises*, 2e série, t. 1, no. 226; see also no. 517.

[37] Sigsbee to the Secretary of the Navy, Oct. 22, 1901. Natl. Archives.

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Navy, came from or through Sigsbee's office. At any rate, it was on "information" from high naval authorities that the next opportunity was used to build the American navy against that of Germany.

This opportunity offered itself during the Anglo-German-Italian intervention in Venezuela in 1902-3.[38] It did not help the Germans in the least to be represented by the smallest naval contingent on the occasion of this action against a bad debtor; as we know now, there were no ulterior designs on the part of the Germans behind this enterprise.[39] They were, however, singled out by the American navy as *the* enemy who had to help pass the naval budget at the time; whereas the British navy could successfully assure the American navy that neither it nor the Monroe Doctrine had anything to fear from its side.[40] Of the three partners to the blockade only the Ger-

[38] On June 11, 1902, Sigsbee reported to the General Board conversations with officers of the German cruiser *Vineta* which was undergoing repairs at Newport, R. I. These officers had "spent months in Venezuelan waters dickering with President De Castro for something, probably the talked-of coaling station or else some other strategic advantage in those waters. They denominate De Castro as a robber and wholly unreliable fellow, so probably he demanded more than the Emperor was willing to pay for the concession. . . ." Natl. Archives.

[39] According to the *Berliner Neueste Nachrichten*, Krupp's own paper, of January 6, 1903, the disposition of the American fleet in the Caribbean under Dewey's command looked almost "like a supervision of the operations of the allied Powers." The tonnage of Dewey's fleet amounted to 129,822 as against 28,750 of the British, 14,800 of the Italian and only 11,147 of the German blockading ships.

[40] The United States Naval Attaché in London, Richardson Clover, had reported on November 4, 1902, that "considerable money is with much secrecy being expended on fortifications in Jamaica. . . . I see nothing more in it than that prudent watchfulness for the security of British offensive power on the American continent and beyond, previously shown in the large expenditures on the defences of Santa Lucia, Bermuda, Halifax, and Esquimault. These expenditures have all been made with more or less secrecy, but I consider this to be more due to instinct than to design, for since I have been in England I have learned that secretiveness is a marked characteristic of the English people of all classes. England today is possessed with the most friendly feeling for the United States, which is likely to continue, but it does not deter her authorities from constant watchfulness and preparation for the day when there may be open conflict. I have always wondered at the want of appreciation on the part of our people, of the advantages possessed over us by England in these

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mans ran into a Sargasso Sea of American susceptibilities, some of which were lying in wait for them because a naval bill was then in preparation. Early in December 1902, soon after the blockade had started, the Office of Naval Intelligence submitted to the chairmen of the two naval committees in Congress, Senator Hale and Representative Foss (who were told that they could always receive from the Office "at very short notice whatever data you are likely to need from time to time, relative to other navies"), an exhibit which Captain Sigsbee intimated they might "think advisable to use rather guardedly." The exhibit included among other things a detailed comparison of German and American warships, because the Captain thought them particularly comparable. "Since the United States, Great Britain and Germany are competing for the world trade it is natural to compare our Navy with the Navies of those nations. I have reasoned that it is hopeless for us in the near future to attempt to compete with England in naval power, but the German Navy offers a fair comparison." [41]

As has been shown, the actual commercial competition between the United States and Germany in world markets was small at the time. But the naval officers on either side exaggerated it just the same in order to rationalize, at least partly, the competition of their navies. Statistics to the contrary were not half as convincing as hostile gossip. Early in 1903, Captain Sigsbee received a letter from a young American naval

fortified bases . . . all connected by cables. We should waste no time in establishing suitable defences at Culebra and Honolulu." (Natl. Archives.) While the blockade of Venezuela still went on, Clover was able to telegraph home after a conversation with the First Lord of the Admiralty: "Keep following message secret. May reduce number of vessels. Has received a telegram from the British Commanding Officer off Venezuela: 'The Commander-in-Chief of the German fleet asks us to join with him aggressive action. Have disapproved and declined.' Admiralty replied to-day approving action of the British commanding officer." Clover to the Navy Department, Jan. 29, 1903. Natl. Archives.

[41] Letter of Dec. 9, 1902. Natl. Archives. The diagrams were published in the *Scientific American*, early in 1903, at the instigation of the Navy Department itself. This magazine took a great interest, largely disguised as technical, in the navy at that time.

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paymaster who reported on a conversation with an unnamed captain of an unnamed German man-of-war who, he declared, had said:

> The next war between great powers would be between the United States and Germany. The causes of the war would be a struggle for commercial supremacy and Germany's intention to colonize in South America. Germany's teeming and rapidly increasing population must have outlets,[42] and, to many, South America offers a most favorable field. The official class of Germany has at heart no regard for the Monroe Doctrine and at a favorable opportunity will so express themselves. The Germans are of the opinion that they would easily be victorious at war with the United States.

The Chief Intelligence Officer endorsed this letter fully, saying that if he himself had been asked for his estimate of German official opinion, as derived from his experience in the Office of Naval Intelligence and on the General Board, as well as from his experience at large, "he would have stated it, in substance, precisely as it is stated in this paper." [43]

The immediate outcome of the Venezuela intervention was a new wave of armaments. The American navy obtained a substantial increase which it would hardly have received without this affair. William II, observing the unfriendly sentiment in England and America, decided early in 1903 to ask for a new increase of the navy, and "a considerable increase of the cavalry appeared to him as also imperative." [44] But the most portentous outcome of the intervention was the final parting of the ways in Anglo-German relations. "Since the Venezuela affair, the English Government has not coöperated with us any more", stated a German Ambassador, looking backward in 1911.[45] Particularly in their relations with America, Germany had proved an impossible ally for Britain's Foreign Office and for her Admiralty. Both of them must

[42] This outlet was, of course, found in Germany's increasing industrialization.

[43] Sigsbee to the Secretary of the Navy, Jan. 10, 1903, suggesting that this report be submitted to the President himself. Natl. Archives.

[44] Waldersee, *Denkwürdigkeiten*, vol. III, p. 200 (Jan. 11, 1903).

[45] *Grosse Politik*, vol. XXIX, p. 225.

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have been relieved to see that the alliance with Japan concluded early in 1902 had not been taken in the United States as implying even potentially a threat to American security. This final separation of these two European Powers, whose close combination was the only thing which might have threatened seriously the safety of the United States,[46] signified another stage in the growth of America's security.

By this time British conservatives were frightened out of even the notion of further coöperation with Germany. The parting of the ways in Anglo-German relations was marked among other things by a series of war games played by the British navy in the winter of 1902-3—at the very season of the Anglo-German intervention in Venezuela. The theme of these games was an American-German war which the American navy won by a narrow margin, largely ascribed to the action of submarines.[47] About the same time, this very break in Anglo-German relations made totally unrealistic that spectre of venerable age: the fear of a landing in the United States of hostile forces, more specifically, hostile forces which were expected to be Germans. Although this notion has been the object of old and—strange to relate—even recent naval speculation, it would always have been impossible, unless British connivance or coöperation with Germany were presumed.*

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[46] Tirpitz' readiness for an understanding with England was at this time perhaps greater than at any other. He wanted to have a novel written describing a German-English war with its disastrous outcome for the two parties and "a Trafalgar won by America, Russia and France without expense." Vagts, *op. cit.*, p. 1578.

[47] For details see *Scientific American*, February 14 and April 4, 1903 and the contemporaneous 14 articles on this *Kriegsspiel* by Fred. T. Jane in the *Supplements* of this magazine. The war game omits a German landing on the shores of the United States proper. It is significant for the strategical concepts in an imperialist age that the two main clashes are treated as taking place in the Caribbean and the Philippines, as if objects of imperialistic importance had ipso facto strategic importance.

* To be concluded in the next number of this review.—ED.

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THE NATIONAL SOCIALIST DOCTRINE OF INTERNATIONAL LAW AND THE PROBLEMS OF INTERNATIONAL ORGANIZATION *

BEFORE Hitler rose to power in Germany the ideas and opinions entertained by the National Socialist movement concerning international relations and the problems of international organization, though interesting as an example of a particular philosophy of international relations, represented but one doctrine among other theoretical elaborations referring to the same subject.[1] Since 1933 they have been of practical interest also, because they have become the basis upon which German foreign policy is being constructed. Now the foreign policy of the Third Reich has been subject to many and diverse interpretations, and there has been an endless questioning as to its "real aims", especially because the numerous "peace-speeches" and other utterances made by Hitler with respect to German foreign policy since 1933 are often not reconcilable with, and sometimes even in striking contradiction to, the well-known National Socialist doctrine of foreign policy created before that year, as contained, for example, in *Mein Kampf*. On the other hand, the statements of the German "political scientists" concerning the National Socialist doctrine of international relations are mostly very vague or are born out of special political situations and deal only with "current events". Therefore, it might be interesting and illuminating to inquire into the position taken by German lawyers vis-à-vis the question of international relations.

* This article had been finished when National Socialist foreign policy entered the third stage, that of imperialistic expansion in March 1939. Again revealing its opportunist character National Socialist doctrine of international law at once adapted itself to the new political conditions (*cf.* Carl Schmitt, *Völkerrechtliche Grossraumordnung* [Berlin-Vienna, 1939]). This article has been left unchanged because its conclusions seem to be corroborated by the recent developments, and the quotations still seem to be instructive with respect to the function of science in a totalitarian dictatorship.

[1] Russell, *Theories of International Relations* (New York, London, 1936); for National Socialist ideology *cf.* pp. 498-505.

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I

As Laurence Preuss pointed out in 1935,[2] National Socialism has tried to forge a doctrine of international law which claims to be specifically "National Socialist" in character. Looking back over more than six years of elaboration by National Socialist authors, we note that the attempt has been a successful one. A new German school of international law has now completed a legal system with distinct features of its own. Its broad outlines will be described, as the first part of our inquiry.

The National Socialist doctrine of international law is an inherent part of a more general theory, the racial theory of law which, in turn, forms a part of the National Socialist "philosophy" known as "racialism". The racial theory of law[3] is a rather mechanical combination of the ideas of the "historical school of law", shaped at the beginning of the nineteenth century, the age of romanticism in legal theory, and the "racial" theory of history, borrowed from men like Gobineau and Houston Stewart Chamberlain. Like every phenomenon of social and cultural life, law, according to this theory, has its source and origin in the race. This means that each of the various races and peoples has its own law which is inseparably bound up with that specific race or people, and which cannot be detached from it, nor replaced by the law of another people nor transferred to another race.

The idea of abstract, formal law valid for everyone is the result of rationalist and "individualist" thought, which caused Roman law to be introduced as a supernational *ratio scripta* into what was, up to that time, genuine German law. Liberal democracy thus destroyed the strength of the German "community of the people", and law, no longer the "concrete order of the community of the people", became a system of abstract rules, the guarantee of which consisted not in their inner justice but only in the coercive apparatus of a state which decided all questions arbitrarily in the face of isolated individuals to whom

[2] "National Socialist Conceptions of International Law", *American Political Science Review*, vol. 29, 1935, pp. 595-609.

[3] *Cf.* Nicolai, *Die rassengesetzliche Rechtslehre* (2d ed., Munich, 1933), since 1933 "the only valid legal theory in Germany" (p. 4).

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a certain sphere of liberty was secured on the basis of "fundamental rights". According to National Socialism, this development has been in contradiction to the very "idea" of law. Law is not rooted in the will of the state, but is vested in the legal convictions of the people; its task is to serve the life of the people: "Law is that which is useful for the people."[4] The state is nothing but an instrument for the preservation of the people; its statutes are only the conscious forms of what lies, for the most part unconsciously, in the people's mind. Should state-law happen not to coincide with the legal feeling of the people, the former is not the real law. Such a contradiction between "statute" and the people's "law convictions", however, although frequent in a "liberalistic" society, is unimaginable in the National Socialist "leader-state", because the leader, as we are told, embodies the feeling of the people and can never be in disagreement with it. Therefore, each action of the Führer is genuine law, and the National Socialist state is the genuine form of democracy. As law and moral ideas are rooted in the same source, the mind of the people, there cannot be in the National Socialist state any difference between law and morality. The National Socialist law is just; it is the "righteous law".[5]

II

This racial theory of law renders difficult the conception of an international law. If, according to National Socialist convictions, genuine law can grow only out of the racial substance of the people, then logically international law also must have its basis in the legal convictions of the various racial groups; and as each group is said to have its own particular conception of law, the foundation of an international law even as an interracial law would appear impossible. International law would have to be reduced to the different, and possibly con-

[4] *Cf.* Frank, in *Deutsches Recht*, vol. 6, 1936, p. 3; Rosenberg, *Der Mythus des 20. Jahrhunderts* (53d and 54th ed. Munich, 1934), p. 591; Meinberg, "Rasse und Recht", *Juristische Wochenschrift*, 1935, p. 3075.

[5] *Cf.*, e. g., Wolf, *Richtiges Recht im nationalsozialistischen Staat* (Freiburg i.B., 1934), p. 10.

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flicting, law convictions of the separate races or peoples. We would have an analogy to the radical "sovereignty" theory: this theory, by basing all international law on the "sovereign will" of the single states, renders precarious the existence of binding international law, which is, in the last resort, reduced to numerous "exterior public laws" of the states standing independently one alongside the other. Similarly, a racial doctrine of international law would reduce international law to the different law convictions of the individual peoples or races. That would mean a pluralistic dissolution of uniform international law into various systems forming parts of the different national orders of law and coexisting in isolation one parallel to the other.

That this conclusion is the logical consequence of a National Socialist doctrine of international law which is consistent with its own premises was shown in a book which was published shortly after Hitler's advent to power. With the significant title of *Deutsches Aussenstaatsrecht* (Germany's exterior public law),[6] it claimed to set forth "the consequences of National Socialist world-outlook for the legal order of German foreign relations" by reducing international law to an *ensemble* of rules belonging exclusively to the German order of law.[7] For Germany international law is only the law concerning its external relations which has been recognized by Germany and has been incorporated in its municipal law; its validity depends upon this incorporation and exists as long as this recognition lasts, for the competence of the national state cannot be limited by any norm binding its sovereign will.[8]

On the publication of Schecher's book the German jurists saw themselves immediately confronted by a decisive problem.

[6] Schecher, *Deutsches Aussenstaatsrecht* (Berlin, 1933).

[7] *Ibid.*, p. 136. "The new principle of the state as the organization of a racially circumscribed people demands the primacy of municipal law. . . . A legal order of foreign relations is always contained in the legal order of a definite state."

[8] *Ibid.*: "The state is bound by the agreements made with other states because and in so far and as long as they are parts of its own legal order." *Cf.* also pp. 26, 27.

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Here was a challenge which had to be answered. It was unanimously repudiated.[9] For political reasons, National Socialism could not openly reject the notion of international law. Ever since Hitler's pacific statements, made first in the speech of May 17, 1933, National Socialist lawyers have been bound to recognize the existence of an international law.[10] From then onward all their constructions, systems and theories have been attempts to reconcile the two tendencies: to erect a system based upon the recognition of international law and to safeguard the principles and dogmas of the racial theory of law.

III

One group of authors has tried to build the new system upon the conception of the law of nature; a second group includes those who have tried to base their constructions mainly on principles of "blood and race". Both systems differ somewhat with respect to their basic theory, but they both arrive at the picture of an international community of nations or races in which, after all the vain and deceiving efforts of past and present, mankind will live in peace and harmony and will enjoy a free development of all its peoples.[11]

[9] *Cf.*, e.g., Wolgast, *Völkerrecht* (Berlin, 1934), pp. 969, 970; Schmitt, *Nationalsozialismus und Völkerrecht* (Berlin, 1934), p. 15; Walz, "Nationalsozialismus und Völkerrecht", *Völkerbund und Völkerrecht*, vol. 1, 1934/35, p. 471; "Der Kampf ums Völkerrecht", *ibid.*, vol. 4, 1937/38, p. 694; Kraus, "Das zwischenstaatliche Weltbild des Nationalsozialismus", *Juristische Wochenschrift*, vol. 62, 1933, p. 2419.

[10] This political background is sometimes openly and rather naïvely admitted by National Socialist authors themselves. *Cf.* Wolgast, "Nationalsozialismus und internationales Recht", *Deutsches Recht*, vol. 4, 1934, p. 196; Bruns, *Völkerrecht und Politik* (Berlin, 1934), p. 19; Tatarin-Tarnheyden, in a review of Ludwig Schecher's *Deutsches Aussenstaatsrecht*, in *Völkerbund und Völkerrecht*, vol. 1, 1934/35, p. 298; Mosler, *Die Intervention im Völkerrecht* (Berlin, 1937), p. 78.

[11] How National Socialism succeeded in making the theory of international law as uniform as it is now cannot be pointed out in detail here; the complete "coördination" of science in Germany plays an important part in this phenomenon of conformism. The system itself can be sketched here only in its broad outlines; a more detailed study of the doctrine will be published by the author of this article. *Cf.* also the author's *Die Völkerrechtslehre des Nationalsozialismus* (Zurich, 1938) and "La doctrine nationale-socialiste du droit des

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The first group begins with a justification of the concrete political postulates included in the slogan of the "equal rights of Germany". But this argument is at once broadened into general principles. The rules of the international treaties are no longer examined in relation to their "validity", "invalidity", etc., in a formal sense, but are measured by another definitely different criterion: They are said to be subject to the criterion of "justice". "Unjust" treaties, stipulations, norms cannot participate in the "sanctity of law", they are "misuse of the form of law", a "simple order of power".[12] In ever varying formulae the National Socialist jurists try to define the sense of this word "justice": "respect of nature and its laws of life",[13] "harmony with the very idea of law",[14] formation of the community of nations "organically", according to the principle of *suum cuique*.[15] Such are the vague, indeed almost meaningless, formulae which, obviously, contain only that which the author wants them to contain. As a matter of fact, some of the authors try to develop this system of natural law more fully by introducing the concept of "fundamental rights" of the states. According to Bruns, for example, the true basis of a genuine legal community of coördination is the concept of equality; only equal subjects can be members of such a community, each of them bound to recognize the others as equal in rights and duties. This implies the duty of respecting the others' "existence" and "independence", for only "the independent sovereign community of the people can be a member of the community of states." Since real independence presupposes the possession of the means of defending

gens", *Revue internationale de la théorie du droit*, vol. 12, 1938, p. 116, both published under the assumed name of Eduard Bristler.

[12] Bruns, "Rechtsgemeinschaft oder Herrschaftsgemeinschaft?", *Völkerbund und Völkerrecht*, vol. 1, 1934/35, pp. 16, 17; "Die politische Bedeutung des Völkerrechts", *Zeitschrift der Akademie für deutsches Recht*, vol. 2, 1935, pp. 342, 343.

[13] Bruns, "Die politische Bedeutung des Völkerrechts", p. 343.

[14] Kraus, "Interesse und zwischenstaatliche Ordnung", *Niemeyers Zeitschrift für internationales Recht*, vol. 29, 1934, p. 64.

[15] Tatarin-Tarnheyden, "Völkerrecht und organische Staatsauffassung", *Archiv für Rechts- und Sozialphilosophie*, vol. 29, 1936, pp. 305, 306.

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oneself, the possession of arms is also a fundamental right of the states in the new international community.[16]

All the other attempts to furnish a natural law foundation for international law on the basis of "fundamental rights" are made in a similar way. We find systems of all kinds, one based upon the "right of independence", others on that of "honor", "mutual respect", or "self-preservation".[17] All this remains indeterminate, the only concrete concept being that of the "right to the possession of arms" legitimatizing Germany's rearmament.[18] Besides that, we find a rejection of "imperialism", the idea that peoples with "equal rights" will not aim at subjugating others in order to expand their territories and populations.[19] These are the principles on which, in the opinion of these authors, the real international community has to be established. Their application is bound to produce a peaceful, harmonious "community" of nations, based not on predominance but on equality, and the result, according to one of these authors, will be "a situation of peace and harmonious coöperation such as the world has never known before."[20]

[16] Bruns, *Völkerrecht und Politik*, pp. 11, 15; "Deutschlands Gleichberechtigung als Rechtsproblem", *Juristische Wochenschrift*, vol. 62, 1933, pp. 2485, 2486; "Die politische Bedeutung des Völkerrechts", p. 343.

[17] *Cf.*, e.g., the system of Bilfinger, based on the fundamental right of independence ("Gleichheit und Gleichberechtigung der Staaten", *Nationalsozialistisches Handbuch für Recht und Gesetzgebung* [2d ed., 1935], pp. 99, 100; "Zur Lage des völkerrechtlichen Staatsbegriffes", *Völkerbund und Völkerrecht*, vol. 1, 1934/35, p. 408; "Zum Problem der Staatengleichheit im Völkerrecht", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 4, 1934, pp. 481, 486); that of Schmitt, erected on the right of "existence" (*Nationalsozialismus und Völkerrecht*, p. 8); of Petraschek, constructed on the right of "respect" ("Grundrecht und Völkerrecht", *Archiv für Rechts- und Socialphilosophie*, vol. 27, 1934, pp. 499 *et seq.*); of Kraus, based on the right of "honor" ("Revision of the Peace Treaties ex aequo et bono", *New Commonwealth Quarterly*, vol. 1, 1935/36, p. 39).

[18] It is significant that National Socialist authors never consider the demands of other peoples for equal treatment, e. g., the claims of the half-sovereign states, of colonial populations, etc.

[19] Wolgast, *Völkerrecht*, pp. 721, 894; Walz, "Das Verhältnis von Völkerrecht und staatlichen Recht nach nationalsozialistischer Auffassung", *Zeitschrift für Völkerrecht*, vol. 18, 1934, pp. 147, 148; Rogge, *Hitlers Friedenspolitik und das Völkerrecht* (Berlin, 1935), pp. 113, 114.

[20] Wolgast, "Nationalsozialismus und internationales Recht", p. 198.

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With the picture of a "true community of nations" the natural law system of the National Socialist doctrine of international law reaches its completion. From another starting point the second group of National Socialist jurists, that of the "racialists", reaches similar conclusions. The racial foundation of international law begins with the idea of racially delimited peoples, each of which shall embrace all the members of the same people and none but them. The national state which is "racially satiated" is the ideal of international law and international order.[21] Where there exist minorities or parts of different nationalities settled amidst others, the just solution is the multinational state with nationalities equally participating in government and enjoying the right of "cultural" connection with the "conational" state.[22] Once these demands are fulfilled, there will exist a harmonious community of racially or nationally delimited states, where the main causes of conflicts are eliminated, and peace will prevail.[23] This picture is the exact parallel of the community of equal states based on fundamental rights as sketched by the authors of the natural law group.

IV

All these constructions correspond to the doctrine of foreign policy contained in Hitler's "pacific" statements made since 1933. This excursion into the realm of utopia, however, does

[21] E.g., Hamel, "Volkseinheit und Nationalitätenstaat", *Zeitschrift für die gesamte Staatswissenschaft*, vol. 95, 1934/35, p. 585; Dietze, "Naturrecht aus Blut und Boden", *Zeitschrift der Akademie für deutsches Recht*, vol. 3, 1936, pp. 818 *et seq.*; "Europa als Einheit", *Zeitschrift für Völkerrecht*, vol. 20, 1936, pp. 290 *et seq.* This author's peculiar combination of natural law ideas with racialism is described in its details by Virginia L. Gott in "The National Socialist Theory of International Law", *American Journal of International Law*, vol. 32, 1938, pp. 704 *et seq.*

[22] For the details *cf.* Hamel, *loc. cit.*, p. 569; Erler, "Missverstehen, Misstrauen und Misserfolg im Genfer Minderheitenschuzsystem", *Zeitschrift für Völkerrecht*, vol. 22, 1938, pp. 10, 16, 24; Raschhofer, "Volk, Nation und Völkerrecht", *Nationalsozialistisches Handbuch für Recht und Gesetzgebung*, p. 81; Walz, "Minderheitenrecht oder Volksgruppenrecht", *Völkerbund und Völkerrecht*, vol. 3, 1936/37, p. 594.

[23] Hamel, *loc. cit.*, p. 593; Raschhofer, *loc. cit.*, p. 98; Gürke, *Grundriss des Völkerrechts* (Berlin, 1936), p. 45.

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not represent the whole of the new doctrine. Side by side with the beautiful picture of harmonious communities we find tendencies of an entirely different character. First we see that the more precise elaboration of the "fundamental rights" of the states in the systems of certain authors results in undermining the actual possibility of a legal community. For these rights are conceived in an extremely individualistic manner, leaving to the "sovereign" state all liberty to do what it wants. One always stresses the *rights* of the single states, the right of "independence", of "self-development",[24] of "self-preservation" as the right of a state to do all that "which the situation in question demands, even in violation of its obligations", in order to safeguard its "vital interests",[25] or its "fundamental right of liberty",[26] without even trying to elaborate a system of corresponding *duties* which guarantee the same rights to the others. Thus, the stability of a "community" resting upon these rights becomes somewhat precarious. The fact that the only concept which might limit the liberty of its members, that of "equality", is conceived as "relative", subject to considerations of racial value, cannot but add to this uncertainty. Equality, we are told, is relative to "the concrete value of the race represented by the states", that is, their "natural superiority or inferiority".[27] The notion of equality, therefore, only justifies inequality, that is, the hegemony of certain "members of the community" over the others. Similar ideas of hegemony are to be found in the

[24] Wolgast, *Völkerrecht*, p. 754.

[25] *Ibid.*, p. 753; Kraus, "Interesse und zwischenstaatliche Ordnung", pp. 44, 46.

[26] Lohmann, "Das Lebensrecht des deutschen Volkes", *Deutsche Juristen-Zeitung*, vol. 41, 1936, p. 342.

[27] Bilfinger, "Gleichheit und Gleichberechtigung der Staaten", p. 106; Tatarin-Tarnheyden, "Organisches Völkerrecht", *Völkerbund und Völkerrecht*, vol. 3, 1936/37, p. 26; Schweizer, *Eine ideengeschichtliche Grundlage der Staatengleichheit* (Breslau, 1936), pp. 50, 51. *Cf.* also Wolgast, "Ueber die Bedeutung des Werkes von München", *Zeitschrift für öffentliches Recht*, vol. 18, 1938, p. 420.

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racialists' group where the right of the "Nordic" race to dominate the inferior races is sometimes openly proclaimed.[28]

On the other hand, certain authors insist upon the "political" character of international law, which in their minds means that the interests of the single states must always take precedence over international interests, that is, also over the interest in the existence and observance of legal obligations.[29] Here, as a matter of fact, some racialists try to prove the binding force of treaties. As we have pointed out, the fundamental difficulty of a National Socialist doctrine of international law is the attempt to demonstrate how international law, having its source in the legal consciousness of the single races or peoples, can have an obligatory character. One author in the racial group, while admitting that, according to National Socialist principles, there cannot exist any source for the validity of the international treaty other than this legal consciousness of each of the parties to it, finds that the binding force of the treaty lies in the fact that the "legal notions of truth, honor, and fidelity", prescribing to keep the pledged word, are in conformity with German law-feeling.[30] These "legal notions", however, could at best create a kind of autolimitation of the partner recognizing this principle, and would not, for example, be valid for a partner belonging to another racial group with different legal feelings.[31] Moreover, the

[28] Lange, "Volksrecht – Völkerrecht", *Deutsche Juristen-Zeitung*, vol. 38, 1933, pp. 807, 808; Nicolai, *Der Staat im nationalsozialistischen Weltbild* (Leipzig, 1933), p. 54; Schmelzeisen, *Das Recht im nationalsozialistischen Weltbild* (Leipzig, 1934), p. 20; Lehmann, "Nationalsozialismus und Minderheitenpolitik", *Deutsches Recht*, vol. 4, 1934, p. 210.

[29] Koellreutter, *Grundriss der allgemeinen Staatslehre* (Tübingen, 1933), pp. 226, 227, 229, 230; Walz, "Der Treuegedanke im Völkerrecht", *Deutsches Recht*, vol. 4, 1934, p. 525; Kraus, "Interesse und zwischenstaatliche Ordnung", p. 45; v. Freytagh-Loringhoven, "Realismus im Völkerrecht", *Zeitschrift der Akademie für deutsches Recht*, vol. 2, 1935, p. 934; "Richterliche Entscheidung des Locarno-Streites?", *Deutsche Juristen-Zeitung*, vol. 41, 1936, p. 405.

[30] Richter, "Völkerrecht", *Deutsches Recht*, vol. 4, 1934, pp. 207, 208.

[31] One of the "racialists" states expressly: "Honor and fidelity, veracity and morality have generally the same significance for each descendant of the Nordic race, while members of other races (above all those of Semitic and

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very existence of the pretended "German law-feeling" of treaty-fidelity is denied by other National Socialist authors who, when dealing with the same problem of the binding force of treaty-engagements from the National Socialist point of view, state that the rule *pacta sunt servanda* is *not* in conformity with "Germanic" legal convictions. In their opinion, in striking contradiction to the statement quoted above, the principle of "fidelity" must not be understood in the sense of fidelity toward the treaty, toward the pledged word, but as "fidelity toward the people".[32] As both parties claim to base their argument on the "Nordic-Germanic legal consciousness", we may also doubt the value of the argument for the binding force of treaties according to National Socialist legal convictions. This doubt is intensified when we note that the significance of the principle *rebus sic stantibus* is stressed to a degree which would deprive legal obligations arising from treaties of almost all their meaning. Some authors give the clause an interpretation according to which "the preservation of the life of the nation" is to prevail over legal obligations, so that the state may retire unilaterally from them whenever, "according to its own discretion, they are no longer in conformity with its tasks."[33] There are no objective criteria as to the modifications of circumstances which might give the state the right of withdrawal: "The final decision in the case of a dispute concerning the clause is by resort to arms."[34] It was only consistent with this line of argument when one author frankly admitted that treaties are nothing but "scraps of paper": "Before the majesty of life each treaty is a scrap of paper for the sake of peace."[35] Such are the realistic features of the

Hamitic descent) would give a different sense to these notions, which, for us, are quite clear." Kraaz, "Nationalsozialistisches Völkerrechtsdenken", *Reichs- und preussisches Verwaltungsblatt*, vol. 55, 1934, p. 9.

[32] Walz, "Der Treuegedanke im Völkerrecht", pp. 524, 525.

[33] Koellreutter, *Grundriss der allgemeinen Staatslehre*, p. 65; Graf Westarp, "Die clausula *rebus sic stantibus* im heutigen Völkerrecht", *Juristische Wochenschrift*, vol. 63, 1934, p. 201.

[34] Graf Westarp, *loc. cit.*

[35] Keller, "Völkerrecht von morgen", *Zeitschrift für Völkerrecht*, vol. 17, 1933, p. 366.

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National Socialist doctrine of international law, features which are scarcely hidden behind the beautiful façade of a peaceful and harmonious international community.

V

The National Socialist systems of international law in their main outlines reveal the ideas which National Socialist jurists entertain concerning international relations. These ideas can be made clearer by a consideration of two tendencies of National Socialist doctrine which concern more intimately the problems of international relations; they may be described as the tendency of "minimization" of international law and of "regionalization" of international relations.

The question of "the function of law in the international community" is answered in the negative by National Socialist lawyers. The part which law plays in international relations, according to these authors, is relatively insignificant. General international law can contain "only a few exterior rules"; "it necessarily must remain undeveloped and be of such little content that it will be almost intangible." At any rate it will be of a "technical" character, regulating some "superficial" and "exterior" interests of the states, and will be created only by means of express stipulation.[36] In contradiction to the anti-voluntarist foundation of the racial theory of law and to the concept of an international community based on general principles which are valid independently of the will of the single members (such as "equality", "fundamental rights of the states", the law of nationalities, etc.), international law is here reduced to contractual relations among individual states and dissolved into the regulation of bilateral, particular interests.[37]

[36] Nicolai, *Die rassengesetzliche Rechtslehre*, p. 48; also Kraaz, "Nationalsozialistisches Völkerrechtsdenken", p. 9; Dietze, "Die Problematik der europäischen Rechtseinheit", *Geist der Zeit*, vol. 16, 1938, p. 314; *cf.* also the system of Wolgast, based essentially on the conception of international law as constituting a mere "society", in contradistinction to the genuine "community" of internal state law ("Nationalsozialismus und Völkerrecht", *Zeitschrift für Völkerrecht*, vol. 18, 1934, p. 130).

[37] Wolgast, "Nationalsozialismus und internationales Recht", p. 198; *Völkerrecht*, pp. 969, 970. Kraus, "Interesse und zwischenstaatliche Ordnung",

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Behind this tendency to minimize the scope and the contents of international law, however, there is another more far-reaching tendency, namely, to deny its value completely. The "juridification" of international life has created the "morbid" situation of too much "formal" law, an overemphasis upon law and overactivity in the legal sphere which only renders international law less sound.[38] This "legalistic" atmosphere must be replaced by an international mind freed from "petrified" legal regulations and dominated by moral concepts, such as those of honor, respect and mutual confidence; legal relations are to be replaced by "relations of confidence", which will solve all problems arising "among proud and free nations".[39] The principal protagonist of this anti-legalistic doctrine, however, is at the same time profoundly opposed to the "pacifist misconception of a growing internationalization of the life of states and peoples" which prevents us from grasping "the basic rules of social fighting instincts"; in the international realm war is inevitable, and all that international regulations can do is to create a law of warfare, in order that "the duel" may be fought in a chivalrous way.[40] Thus this neo-feudal outlook leads from the idea of a peace based on international morality back to the concept of eternal struggle fought according to a *code d'honneur*.

Others aim at a "regionalization" of international relations. A somewhat closer community of states and peoples is said to

pp. 27, 30, 57; "Das zwischenstaatliche Weltbild des Nationalsozialismus", pp. 2418, 2421. The need for international organizations and unions of a purely technical, non-political character is admitted, but even here we meet reservations and suspicion. *Cf.* Lederle, "Die Zukunft der deutschen internationalisierten Ströme", *Zeitschrift für Völkerrecht*, vol. 20, 1936, pp. 74, 75; Rühland, "Staatsverträge und nationalsozialistische Rechtsauffassung", *ibid.*, vol. 18, 1934, p. 134.

[38] Schmitt, *Nationalsozialismus und Völkerrecht*, pp. 9 *et seq.*; Bohnacker, "Wehrrecht", *Juristische Wochenschrift*, vol. 64, 1935, p. 2698.

[39] *Cf.* the systems of Rogge — especially *Nationale Friedenspolitik* (Berlin, 1934); *Kollektivsicherheit, Bündnissystem, Völkerbund* (Berlin, 1937) — and Berber, *Sicherheit und Gerechtigkeit* (Berlin, 1934).

[40] Rogge, *Nationale Friedenspolitik*, pp. 651 *et seq.*, 657, 658; *Kollektivsicherheit, Bündnissystem, Völkerbund*, pp. 264 *et seq.*

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be possible among racially related peoples.[41] Curiously enough, this principle, a consequence of the racial theory of law, is never applied to concrete situations. That is, it is never made quite clear which "racially related" groups ought to form the different regional communities; a rather platonic wish to see the "Germanic" peoples form such a group is all that we find.[42] The difficulty of dividing the international realm into racially delimited regions leads other authors to replace the criterion of a racial relationship with another kind of structural homogeneity. Gürke, for example, presupposing that quite definite forms of *political* ideas and organization always correspond to different *racial* groups, tries to base an international regionalism upon such areas of political structure and ideology.[43] But as he is not able to show which, *in concreto,* are the peoples forming the supposed groups of states of "nationalistic", "catholic" or "democratic" structure and thought, he is in the end obliged to admit that all states, if only they are really sovereign and independent, belong to one universal international community, with the exception of the "Jewish people" and the Soviet Union.[44]

VI

As far as the "political" organization of the world is concerned, we note that the whole post-war development of international law and organization, and especially the attempts to organize peace on a legal basis, are deemed by National Socialism to be not only futile and superfluous but really injurious. The mere number of pacts designed to secure peace is con-

[41] Nicolai, *Die rassengesetzliche Rechtslehre*, p. 48; Bumiller, "Die nationalsozialistische Rechtsidee und das Problem des Völkerrechts", *Deutsches Recht*, vol. 4, 1934, p. 204; Berber, *Sicherheit und Gerechtigkeit*, p. 17.

[42] Nicolai, *Die rassengesetzliche Rechtslehre*, p. 48; Wolgast, *Völkerrecht*, p. 741.

[43] Gürke, *Volk und Völkerrecht* (Tübingen, 1935), pp. 1 *et seq.*, 31, 60 *et seq.*; *Grundzüge des Völkerrechts*, pp. 12 *et seq.*; "Der Staats- und Volksbegriff im Völkerrecht", *Deutsches Recht*, vol. 4, 1934, p. 334.

[44] Gürke, *Volk und Völkerrecht*, pp. 76, 84, 99; *Grundzüge des Völkerrechts*, pp. 12, 15, 16. Compare also the system of Bockhoff, *Völkerrecht gegen Bolschevismus* (Berlin-Leipzig, 1937), and several articles by Carl Schmitt of the years 1935-36, all based upon the conception of "Europe against Bolshevism".

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sidered to be generative of new disputes over interpretation and application.[45] Consequently, the whole tendency to create a more detailed legal system to secure peace is rejected.[46] Rather, there should be developed a new form of international intercourse, based not so much on legal institutions and juridical obligations as on moral principles, the notion of honor, mutual confidence, and so forth. A "gentlemen's agreement to base mutual relations on clarity and justice does not require a great number of confused and intricate guarantees and pacts."[47] Direct discussion and bilateral agreements between related nations are the only legal instruments admitted by National Socialist authors.[48] That Germany's political situation here influences opinion is obvious and is sometimes openly confessed by National Socialist jurists themselves.[49]

There is unanimity in the rejection of a league of nations as a political institution. Especially is it held that no function of guaranteeing the political or territorial status of the member-states ought to be conferred on any society of nations, and no collective sanctions should be placed behind the political engagements, if any, of its members.[50] In contradistinction to the idea of collective maintenance of peace by sanctions and other legal obligations to assist the victim of an aggression, the "classic" institution of neutrality is stressed.[51] An objection is also made to the possibility of defining and identifying the

[45] Bohnacker, "Wehrrecht", p. 2698.

[46] Schwarz, "Der Völkerbund im Verfall", *Die Tat*, vol. 27, 1935/36, p. 374; Berber, "Der französische Gegenplan", *New Commonwealth Quarterly*, vol. 2, 1936/37, p. 47; Mosler, *Die Intervention im Völkerrecht*, p. 4.

[47] Rühland, "Staatsverträge und nationalsozialistische Rechtsauffassung", *Zeitschrift für Völkerrecht*, vol. 18, 1934, pp. 136, 137.

[48] Scheuner, "Bündnissystem, Staatenverständigung und europäische Ordnung", *Völkerbund und Völkerrecht*, vol. 3, 1936/37, p. 746.

[49] Schwendemann, "Deutschland und das Kollektivsystem", *New Commonwealth Quarterly*, vol. 1, 1935/36, pp. 109, 110; Wolgast, *Völkerrecht*, p. 131; v. Freytagh-Loringhoven, "Les Ententes regionales", *Recueil des Cours de l'Académie de droit international*, 1936, II, pp. 610 *et seq.*

[50] Schwendemann, *loc. cit.*, p. 104; Berber, "Neutralität und kollektive Sicherheit", *Zeitschrift für Politik*, vol. 26, 1936, pp. 366 *et seq.*

[51] Berber, "Der französische Gegenplan", pp. 36 *et seq.*; "L'Allemagne et le changement pacifique", *Esprit International*, 1937, p. 205.

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"aggressor", as, it is said, "all the positive fictions of law always operate at the expense of the weaker party." [52] There is a doubt as to the remaining functions of a league of nations, an institution which, according to some National Socialist authors, ought to exist nevertheless and be constituted by reforming the existing institution or by the creation of a new one.[53] Most of the writers remain entirely noncommittal, but sometimes it is suggested that the League be transformed into "a purely cultural and economic system of collaboration and that its political activity be limited to mediation." [54] This is as far as the suggestions go.

International arbitration and adjudication are likewise treated with reserve and even distrust. Once one accepts the National Socialist viewpoint, this reluctance to submit to a legally binding decision of an international body is quite understandable: The mere existence of a permanent court composed of judges who belong to all kinds of races and peoples and are to judge a dispute according to a law common to all of them is in itself a permanent refutation of every racial theory of law. In the opinion of National Socialist jurists, there exists no "common measure of justice" and consequently no "common rule of law" according to which an international dispute may be settled; therefore there can be no such thing as a real "international" tribunal deciding along "international lines". The Permanent Court of International Justice, for example, is always forced to decide according to political considerations.[55] Here, for once, the existence of international law as a source of jurisdiction is implicitly denied. In the course of the discussion, however, arbitration is accepted as an

[52] Schmitt, *Nationalsozialismus und Völkerrecht*, pp. 18 *et seq.*

[53] *Cf.*, e.g., Rühland, *loc. cit.*, p. 137.

[54] v. Freytagh-Loringhoven, "Reform des Völkerbundes", *Völkerbund und Völkerrecht*, vol. 3, 1936/37, p. 236; "Reformarbeit im Völkerbunde", *ibid.*, p. 587; Wolgast, "Die Reform des Völkerbundes", *Zeitschrift für Völkerrecht*, vol. 20, 1936, p. 448; Bilfinger, "Sanktionen und Reform des Völkerbundes", *Zeitschrift der Akademie für deutsches Recht*, vol. 4, 1937, p. 321.

[55] Gürke, *Volk und Völkkerrecht*, p. 79; Keller, "Völkerrecht von morgen", p. 367; Barandon, "Das System der politischen Staatsverträge seit 1918", *Handbuch des Völkerrechts* (Stuttgart, 1937), IV, 2, p. 170.

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existing institution, though its scope is "minimized". The evolution of international law which has led to the elimination of the reservations relating to "national honor" and "vital interests" is regretted, and a return to the pre-war system of arbitration is strongly recommended: the clauses respecting "national honor" and "vital interests" are to be reinserted in all treaties of arbitration, and "political questions" ought to be excluded from all international arbitration.[56] Finally, National Socialist authors go so far as to interpret *each* arbitral convention or *compromis,* even if in itself it does not contain any restriction, as *ipso facto* containing the clauses of national honor and vital interests, just as *rebus sic stantibus* is read into each treaty. Such clauses are said to be "beyond the power of renunciation", and a *compromis* expressly excluding them would be in contradiction to "the very idea of international law".[57] One of the best German students of international jurisdiction declares: "Ultimately no state will submit to the decision of an arbitral tribunal when the vital interests of the nation are at stake."[58] As the individual state alone decides whether or not this is the case, even international judgments, according to National Socialist conceptions, are at the discretion of the sovereign states.

VII

What conclusions can be drawn from this picture of National Socialist legal theory? Does it reveal more about the aims and intentions which lie at the bottom of National Socialist ideology and its action in the realm of foreign relations than do the well-known National Socialist foreign policy statements and doctrines? As a matter of fact, in its details, in its position vis-à-vis the special problems of international organization, National Socialist legal doctrine is often nothing but the

[56] v. Freytagh-Loringhoven, "Streitschlichtung im Völkerbunde", *Deutsches Recht*, vol. 5, 1935, p. 119; "Richterliche Entscheidung des Locarno-Streites?", p. 404; Wolgast, *Völkerrecht*, pp. 357, 358, 898.

[57] v. Freytagh-Loringhoven, "Richterliche Entscheidung des Locarno-Streites?", pp. 404, 405; Wolgast, *Völkerrecht*, p. 898.

[58] Schenk Graf von Stauffenberg, "Friedliche Erledigung internationaler Streitfälle", *Deutsches Recht*, vol. 5, 1935, p. 120.

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abstract expression of a given political situation and seems to have only the function of justifying the actual steps of German foreign policy by "legal" considerations. There is, however, one characteristic feature which may help us to look deeper into the real function of the National Socialist doctrine of international law: there always appears to be a gap between the theories in question and the structure erected upon them. The way, that is, in which special problems have been dealt with appears to be in contradiction to their theoretical foundation. A world-wide legal order of international relations, for example, is said to be impossible, but universal technical organizations are admitted. Genuine international jurisdiction is demonstrated to be in contradiction to the essence of law as conceived in the racial theory, but in practice it is only to be reduced to a less developed form. This corresponds to the double aspect of the international law doctrine of National Socialist jurists, whose pictures and formulae concerning the international "communities" are constantly refuted by the basic concept of law in National Socialist theory. This is a consequence of the fundamental difficulty arising from the acceptance of the racial character of law and the necessity of recognizing international law in spite of this basic legal conception. However, this necessity seems to be only a transitory one, as is shown by the fact that the more "pacific" systems appeared early in the discussion and have since been more and more replaced by "realistic" attitudes (for example, Bruns's system of a community based on equality was elaborated, as were most of the similar systems, in 1933 and 1934, while in opposition are theories such as those of Gürke and Bockhoff, which have become dominant in the last few years).

Thus different ideas seem to correspond to different stages of National Socialist foreign policy. The doctrine of "law of nature" belonged to the years when Germany's "equal rights" had still to be assured. The system of the "racialists" corresponds to the stage of national unification of "Greater Germany". Once this goal of "racial satiation" is attained there will be no difficulty in preserving only the realistic parts of the theory based on the dogma of the "eternal struggle of

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races". Then, and only then, we shall have a doctrine consistent both within itself and with general National Socialist *Weltanschauung*. If National Socialist authors today still "recognize" international law, if they apparently still accept the desirability of some kind of "international organization", they simply accept for the present stage of German foreign policy what appears to them as a "lesser evil" in comparison with the relics of a stronger integration of international society. But the general character of their theories and systems justifies the conclusion that they do not want even the realization of a state of things which they proclaim as their ideal but which still would restrict an expansionist imperalism. Their real aims merge in the ideas and ideals of *Mein Kampf*. Here they pass the border line which separates civilization from barbarism.

THE INSTITUTE FOR ADVANCED STUDY

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CONCEPTS OF TAXABLE INCOME III

The Italian Contribution [1]

WITH the exception of a few isolated attempts, the major Italian contributions to the literature of concepts of taxable income were made during the first two decades of the present century. To one who has had to rely largely upon secondary sources, it appears that the Italians wrote in the shadow of an economy which differed in many respects from that of the United States or of Germany.

Two aspects of this economy which present serious problems to Italian statesmen are the lack of efficient industrial organization and the scarcity of capital and raw materials. Italy lacks an adequate supply of coal, iron and oil, the basic substances out of which modern industrialism has fashioned its empires.[2] Furthermore, traditionally the problem of efficient industrial organization has been a stumbling block in the path of Italian statecraft. Though rich in some resources and amply populated, the Italy of the period with which the subsequent pages deal was apparently unable to establish man-resource relationships of better than submarginal productivity.[3] Lack of basic raw materials and low organization efficiency apparently conspired to set acutely felt limits upon the supply of long-term capital funds and Italian-owned foreign balances. The scarcity of both long-term funds and foreign balances was somewhat alleviated when Italian emigration began to gather momentum during the last quarter of the nineteenth century.

[1] This article has been made possible by a grant from the Columbia University Council for Research in the Social Sciences.

[2] Cassuto, A., "Economic Resources of Italy" in *Nations of Today*, Buchan, J., (editor) (London, 1923), pp. 264 *et seq.*

[3] Cassuto, for instance, reports that though the Italian fishing industry employed a larger number of men and craft than the British, the value of the Italian haul was but five per cent of the value of the British haul. See Cassuto, *loc. cit.*, p. 277.

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Many Italians who left their native land retained close relations with friends and relatives "back home". Some went abroad firmly resolved to challenge fame and fortune and to return home once they had found their "golden" opportunity. These sentimental values, assiduously cultivated by "interests" in the mother country, had their prosaic economic repercussions. During the pre-war years, for instance, remittances to Italy by Italian emigrants amounted to approximately twenty million pounds sterling annually. There are some who believe that it was only by the grace of these emigrant remittances that the wheels of the Italian industrial economy continued to spin.[4]

While Italy's private economy was parsimonious, her public economy spent with a lavish hand for glittering imperialist ventures.[5] Some of these were so costly that the Italian tax system seldom succeeded in balancing the budget of the kingdom.[6]

The tax system,[7] like the Italian economy, differs markedly from the tax systems of the United States and Germany. Fees and public prices aside, as the system evolved between the unification of the kingdom in 1871 and the establishment of the Fascist régime, it consisted of: (1) the land tax, (2) the building tax, (3) the mobile wealth tax, (4) the complementary income tax, and (5) the progressive bachelors' income tax. Both land and building taxes were introduced in 1864. On January 26, 1865, this original law was replaced by an enactment which provided for separate and distinct fiscal treatment of land and improvements, respectively. The sections of the law of 1865 relating to the taxation of land were again recast on March 1, 1866. Under the revised statute, the land tax was put on a net yield base. For fiscal purposes, net yield

[4] *Ibid.*, pp. 299 *et seq.*

[5] Lemonon, E., *L'Italie d'après guerre* (Paris, 1922), pp. 169 *et seq.*

[6] Sturzo, L., *Italy and Fascismo* (New York, 1927), chapters 1 to 4 inclusive. Also, Villari, L., *The Awakening of Italy* (London, 1924), pp. 135 *et seq.*, and Villari, *Italy* (New York, 1929), pp. 234 *et seq.*

[7] This outline of the Italian tax system, unless otherwise accredited, is based upon a memorandum of Ernesto d'Albergo (1934) prepared at the request of Robert Murray Haig of Columbia University.

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is to be equated with value of product minus expenses of cultivation.

The techniques employed in arriving at net yield have been modified from time to time. Likewise, the rates carried by the land tax have not remained constant. At present, for instance, flat rates are used, but during the World War the tax carried a progressive schedule with rates ranging from eleven to nineteen per cent, the progression varying with net yield per hectare. The land net yield tax is used by all levels of government, national, provincial and local.

The building or improvement tax is similar to the land net yield tax. Briefly, in accordance with the administrative procedure for which the law provides, the owners of buildings must declare the gross rentals currently obtained from the properties to which they hold title. These declared gross rentals are audited and corrected by tax officials. On the basis of these audited declarations, net rentals are computed by multiplying the gross rentals by a set of fractions which vary with the type of building or improvement under consideration.

Again, like the land tax, the building tax may be used by all levels of government. Usually, improvements of like type are assessed at a uniform rate; but like the land tax, the improvement tax carried progressive rates during the World War.[8]

In addition to the above levies, Italian law provides for a mobile wealth tax which was introduced in 1864. In contradistinction to the previously mentioned levies, imposition of this tax is restricted to the national government.

The mobile wealth tax (*imposta sui redditi di richessa mobile*), in some respects, resembles American, British and German net income taxes more closely than any other Italian impost. The statute provides for a concept of income of the accrual type.[9] The general concept is limited, however, by the stipulation that, in order to acquire taxable status, income

[8] Professor d'Albergo has tentatively estimated that the three levels of government combined absorb approximately thirty per cent of the net yield of taxable improvements.

[9] Wueller, P. H., "Concepts of Taxable Income I: The German Contribution", POLITICAL SCIENCE QUARTERLY, March 1938, p. 90 note 34.

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must partake of the nature of "new" wealth, must be traceable to the "application of productive energy", and, in addition, must be of such nature as to warrant the presumption that it may recur.[10]

Operating with these criteria, the law establishes six basic income categories which are subject to the income or mobile wealth tax: (1) investment incomes, including interest received and insurance benefits, (2) "mixed" incomes (apparently incomes obtained from entrepreneurial activities), (3) labor income, variable and uncertain, (4) labor income, certain or definite (pensions, stipends, annuities and allowances), (5) income from public sources, and (6) special incomes.[11]

In connection with the computation of the taxable net income, the law permits the following major deductions: (1) maintenance and repairs, (2) depreciation and obsolescence, (3) production taxes, (4) custom duties, (5) excises, (6) transfer, weights, measures, postal, telegraph, telephone fees and transportation taxes, (7) stamp taxes and registry fees, provided they are regularly and continuously applied, (8) wages and salaries paid, (9) interest paid and life insurance premiums, (10) interest from government bonds, and (11) lottery winnings.

The following outpayments are specifically mentioned as being non-deductible: (1) extraordinary stamp taxes and registry fees, (2) outlays for capital improvements, (3) compensation paid to members of the employer's family, (4) income taxes, and (5) living expenses of the taxpayer, including his personal rent.

In striking contrast to American, British and German practice, but in harmony with French practice,[12] the rate

[10] Generally speaking, it would seem that the mobile wealth tax statute promulgates a concept of income whose component parts are represented by the net-product, productivity and periodicity criteria. See Wueller, *loc. cit.*, p. 90 note 34 and p. 92 note 38.

[11] It seems that the government decides from time to time what incomes are to be considered "special". In 1934 the incomes of employees of common carriers and other public servants appear to be classified in that category.

[12] Haig, R. M., *Public Finances of Post-War France* (New York, 1929), p. 316.

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applicable to the taxable net income is not some continuous function of income magnitude but varies with the income source.[13] Again, contrary to Western practice, personal exemptions are not uniform for all taxpayers, but vary with the source from which the income is derived.[14] Whenever technically feasible, the law provides for stoppage-at-source collection.

The mobile wealth tax, which had been the only levy of the income tax type in the Italian system, was supplemented by a complementary tax on income in a decree of December 30, 1923. Unlike the mobile wealth tax, it provides for rates which vary with income magnitude. In addition to the accruals taxable under the mobile wealth tax, it taxes interest on government obligations and all income from whatever source derived over which the taxpayer has "free and unlimited power of disposition". It further provides that families must file a joint return covering the combined net incomes of husband, wife and minor children. The only permissible deduction would seem to be interest paid on personal debts. From the net income as determined above, the taxpayer is permitted to deduct one twentieth for every member of his family for whose support he is legally responsible. To the taxable net so determined, rates varying from one to ten per cent are applicable.

The complementary income tax law was amended in 1932. The amendment authorized the government to substitute the expenditure base for the income base, whenever such substitution increased the amount of tax due in a given year above the tax due as computed by reference to the net income base.[15]

[13] In 1934, the rates applicable to incomes derived from different sources were as follows: (1) investment incomes, 20 per cent; (2) "mixed" incomes, 18 per cent; (3) labor income—variable and uncertain—12 per cent; (4) labor income—"definite"—8 per cent; (5) income from public sources, 8 per cent; and (6) special incomes, 4 per cent.

[14] Again French practice does not conform to this generalization. *Cf.* Report of Joint Committee on Internal Revenue, "Income Tax Laws of France", Washington, 1938, *passim*.

[15] In this connection it may be noted that statutory substitution of the expenditure for the income base is not a uniquely Italian development. The German income tax law of 1925, for instance, made substitution of the expen-

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In line with Fascist philosophy which aims at the encouragement of large families, the mobile wealth and complementary income taxes were supplemented in 1926 by the introduction of a progressive bachelors' income tax, under which all unmarried Italian nationals between the ages of twenty-five and sixty-five are taxable.

The law introduces the "progressive" principle in a twofold manner. In the first place, it provides for lump sum payments which vary with the age of the bachelor. If he happens to be between the ages of 25 and 35, he is liable to a lump sum tax of 70 lira; if his age is between 35 and 50, the tax rises to 100 lira. However, if he is still unmarried when he celebrates his fiftieth birthday, the amount due is reduced to 50 lira. In addition to the lump sum payments, the bachelor, in lieu of doing his bit toward increasing the population, is required to pay one and one-half times the regular rate provided for by the complementary income tax. The law exempts, in addition to bachelors whose income is less than 600 lira, the members of religious orders requiring celibacy, war invalids, selected military officials, the feeble-minded and aliens.

It is not always clear to what extent existing economic and fiscal institutions affected the thought patterns of Italian contributors to the literature of concepts of taxable income. However, it will appear presently that some of their idiosyncrasies are more readily understandable after examination of the institutions which furnished them with stimulation and challenge.

For purposes of exposition the Italian designers of concepts of taxable income will be considered, as they historically developed, in two groups: those who subscribed to concepts of the accrual type and those who championed concepts of the disposition type.

The first attempt at definition of income, it would seem, was made by Pescatore, a man of affairs, in 1864.[16] For Pesca-

diture for the income base permissive. Zimmerman, E., "Zehn Jahre Reichseinkommensteuer", *Steuer und Wirtschaft*, vol. 9 (1930), p. 1001. These substitutions would seem to be prompted by the high cycle sensitivity of upper bracket incomes.

[16] The abstracts from the Italian originals upon which the subsequent exposition is based have been prepared by J. Wilner Sundelson.

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tore,[17] only "that portion of an individual's receipts is income which remains after the needs of the individual (including his family) have been taken care of, amounts for growing needs have been set aside, and measures have been taken to assure the maintenance of the individual's original capital." In other words, Pescatore's concept of income represents a combination of the clear surplus[18] and the preservation-of-source criteria.

The second definition was that of Gobbi, professor of political economy at the University of Boccari.[19] He regarded income as the algebraic sum of "negative and positive economic events"—"negative events" being losses and "positive events" being gains. Though offered without the elaborate frame of reference which characterizes Schanz's concept, Gobbi's definition and that of the German author[20] seem identical from point of view of content.

The third writer of the nineteenth century who addressed himself to a study of the subject was Alessio,[21] a university professor and sometime adviser to the Italian Minister of Finance. For him, income is "that part of the product which remains periodically at the disposal of individuals." If it is permissible to interpret this brief dictum, it would appear that Alessio, though retaining the clear surplus criterion of his predecessor, Pescatore, abandons the latter's preservation-of-source test and substitutes the periodicity criterion for it.

Quarta, vice-president of the Central Commission for Direct Taxes, was the first writer in the twentieth century to attempt a formulation of a concept of income.[22] An accrual to be considered income, he insisted, must exhibit the following

[17] Pescatore, M., *La Logica delle imposta* (Turin, 1867).

[18] On the basis of the clear surplus criterion, only that portion of a person's accruals which remains after the person has defrayed all personal outlays, including customary investments, is income.

[19] Gobbi, U., *Sulla definizione del reddito* (Padua, 1930).

[20] *Cf.* Wueller, "Concepts of Taxable Income I: The German Contribution", p. 106.

[21] Alessio, G., *Saggio sul sistema tributario Italiano* (Turin, 1883), pp. 16 *et seq.*

[22] Quarta, O., *Commento alla legge sulla imposta di ricchezza mobile* (Milan, 1905), vol. 3, pp. 140 *et seq.*

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characteristics: (1) "it must be new wealth", (2) "there must be some cause and effect relation between the accrual and energy or productive force", (3) "there must be a possibility of further successive production of similar wealth from the same source." In other words, Quarta subscribes to the net product, the productivity, the periodicity and the preservation-of-source criteria, which, collectively, constitute his concept of income.

In considering[23] some of the implications which adoption of these three criteria involves, it may be observed that: (1) the net product criterion is not relevant whenever the purpose of a concept of income is the measurement of an individual's ability; (2) the productivity criterion precludes the taxation of windfall and capital gains, unless the pertinent statute includes, in the definition of economic ability, speculative intent, and the tax administration succeeds in establishing such intent in specific instances.[24]

Six years elapsed before another definition of income was attempted by an Italian writer. In a brief article published in 1911, Gerbino[25] expressed the opinion that "the real essential elements of income lie in the idea of periodic, constant and regular reproduction of wealth." This definition would seem to indicate that the constituent parts of Gerbino's income concept are the periodicity and the net product criteria. While this is in no sense an unusual combination, Gerbino points to a novel implication when he asserts that, on the basis of his concept, the services of use-capital—say, an owner-inhabited house—do not partake of the nature of income, because the

[23] Wueller, *loc. cit.*, p. 94. Also, Wueller, "Concepts of Taxable Income II: The American Contribution", POLITICAL SCIENCE QUARTERLY, December 1938, p. 568.

[24] In this connection it may be observed that some consider windfalls an ideal base if the taxation of personal ability is the objective of policy makers. See Pigou, A., *A Study in Public Finance* (London, 1928), Part II, chap. xvi, *passim*. Professor Pigou defines windfalls as "accretions to the real value of people's property that are not foreseen by them and are not in any degree due to efforts made, intelligence exercised, risks borne or capital invested by them." *Ibid.*, p. 177.

[25] Gerbino, G., "Sul Concetto di reddito", in *Giornale degli Economisti e Rivista de Statistica*, February 1911, *passim*.

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successive "uses" are not in the nature of net product, since they do not represent newly produced wealth.

In concluding his observations, Gerbino points out that an income tax does not necessarily have to be fashioned so as to conform to his, or for that matter any other, concept of income, because income taxes are not to be conceived of as taxes against income but as levies against taxable capacity, and while income is a useful supplementary measure of ability, it is not an exclusive one. In point of fact, Gerbino concedes that, inasmuch as the fundamental question is not one of income, but of taxable capacity, such benefits as accrue to the taxpayer by virtue of his ownership of use-capital should form component parts of any levy that aims at the taxation of taxable capacity.

Griziotti,[26] a college professor and public finance theorist, attempted to push the income analysis somewhat further. Though his definition of income is cast in terms of the periodicity [27] (category interpretation) and productivity criteria, he admits that the objective of an income tax is the taxation of persons "in accordance with their respective abilities". This objective, he finds, is in conflict with his own concept of income, because if that concept were used for fiscal purposes, it would preclude the taxation of capital gains which the author regards as ability components.[28]

To circumvent this apparent difficulty, Griziotti essays a classification of capital gains. He suggests that capital gains are not to be taxed if the taxpayer has made the investment "in anticipation of probable gain". Likewise, "fictitious" capital gains, which result from changes in the purchasing

[26] Griziotti, B., *Le Imposta sugli incrementi di valore nei capitali e sulle rendite nei redditi* (Caserta, 1912), pp. 18 *et seq.*

[27] It should be noted that Griziotti was undoubtedly aware of the two possible interpretations of the periodicity criterion, for he goes to considerable trouble to explain that when he uses the term source, he does not refer to specific instrumentalities owned by specific individuals, but to productive agents, which can be reasonably expected to yield income periodically.

[28] Griziotti is apparently laboring under a misconception. It has been suggested previously (Wueller, "Concepts of Taxable Income I", p. 90 note 34 and p. 97 note 56) that adoption of the category interpretation of the periodicity criterion would seem to permit the taxation of capital and windfall gains under an income tax.

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power of the monetary medium, are to be exempt. Gifts and lottery winnings are also to be included in the tax-exempt category. All other forms of capital gains are presumably taxable.

By way of justification of his classification, Griziotti asserts that in order for capital gains to be taxable, they must represent "new" wealth. Unfortunately he does not specify how the new wealth character of a specific capital gain is to be ascertained. Apparently proceeding on the assumption that it can be ascertained, he contents himself with promulgating the rule that the tax should be levied (1) "at the moment when it [the gain] is realized in favor of the taxpayer's economy"; or, if taxation of the realized capital gains is decided against, (2) when the "excess profit or income which the capital gain anticipates materializes."

Regarding the method to be used for ascertaining excess profit, the author argues that the normal profit of a given investment can be estimated by reference to the interest rate prevailing at the time when the investment was made. The difference between the estimated normal and the actual return is to be considered excess profit.

Chronologically, Battistella [29] was the next Italian author who paid more than passing attention to the problem of income definition. By way of a first attempt, he defines income as follows: "for the individual, total income is equal to the net revenue from all invested capital minus interest . . . income may be defined as the sum of goods which the individual can consume without destroying his wealth."

On the basis of this concept, which is identical with the net accretion criterion, windfall and capital gains could be treated as taxable income, because one might very well consume them without "destroying one's wealth". Apparently aware of the all-inclusive nature of his concept, but yet opposed to the taxation of capital gains—for reasons which he does not choose to disclose—Battistella hastens to restrict his concept of income

[29] Battistella, C., *Il Concetto di reddito in economia, in finanza e nel diritto finanziario* (Rovigo, 1913), *passim*.

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by asserting: ". . . the two additional tests of income which must be recognized are periodicity and regularity of return . . . these criteria, however, are relative and must not be applied to too brief an interval of time."

Even this modification of his first definition of income does not necessarily preclude the inclusion of windfall gains into the income category, provided periodicity is defined in terms of the category interpretation. Further revision seems necessary. Income now becomes "the sum of values, which, in exchange of productive services, flows during a certain period into the economy of an individual. These values may be disposed of to the extent that their source is not impaired. . . ."

This concept differs from definitions previously offered by Battistella, in that it includes the productivity criterion. It should be observed, however, that Battistella's last device does not necessarily require the exclusion of windfall and capital gains from the income category. Imputing speculative intent to the taxpayer permits one to tax such gains without being inconsistent, even though the productivity criterion is an integral part of one's concept of income.[30]

Battistella's solicitude as regards the exemption of windfalls and capital gains compels him to attempt still another approach to the problem. He observes that though capital gains partake of the nature of income by virtue of the fact that they may be devoted to consumption purposes without impairing capital, they nevertheless differ from income because of doubtful periodicity.

In conclusion, he offers a few observations regarding desirable exemptions, which illuminate his general position. He suggests that exemptions should equal the "minimum expense necessary to develop each child into a productive factor, such productive factor to be of the same value as the head of the family." This notion, it would seem, is a derivative of his more general proposition that capital values must be main-

[30] It would appear that Griziotti was aware of this possibility. *Cf. supra*, pp. 563 *et seq.* Also, Wueller, "Concepts of Taxable Income I", p. 107.

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tained intact.[31] This suggestion, though interesting, seems to be at variance with a previous statement: ". . . the taxation problem . . . poses the question . . . given the fiscal requirements of the State, how should taxes be distributed among income recipients, according to the least sacrifice principle?" [32]

Professor Ricci,[33] in contradistinction to some of his predecessors, takes a refreshingly pragmatic view of the problem presented by the definition of income. As a first move, he postulates that any number of definitions of income are possible and permissible. For him, the right definition is the one which promises to serve one's purpose adequately. If the purpose of income taxation is the raising of tax revenue in such a manner as to distribute the tax burden in "accordance with ability", then the right definition of income must be sufficiently inclusive to encompass all ability elements.

For income tax purposes, Ricci offers a concept of income of simple and sharply defined contour. "Income equals net revenue. Net revenue equals outlays for consumption, plus savings, plus capital gains, plus appreciations, plus windfalls." This all-inclusive concept represents an unconditional sub-

[31] Professor Irving Fisher, too, at times imputes capital values to labor. See Fisher, I., *The Nature of Capital and Income* (New York, London, 1905), *passim*. For an interesting comment upon this point of view, see Veblen, T., *The Place of Science in Modern Civilization* (New York, 1919), pp. 324 *et seq.*

[32] Battistella's seemingly contradictory position involves a change in basic point of reference. Investigators in this field often face two distinct though related problems. One problem is concerned with the formulation of a concept of income that will realize, if made the basis of an income tax, the legislative intent (in Battistella's case, satisfy the requirements of the least sacrifice principle). The other problem is concerned with the probable economic effects likely to be produced if a given concept of income becomes the basis of fiscal enactment. Typically, the first problem poses a set of questions concerned with legislative changes of a given frequency distribution of personal income. Investigators of the second problem seem to be concerned with the effects of changes in frequency distribution upon the area under the frequency curve during subsequent time intervals. In other words, the first approach is concerned with the redistribution of a given amount of income and the second approach is concerned with probable changes in the sum of income during succeeding intervals of time which are traceable to the imposition of a given income tax.

[33] Ricci, U., *Reddito e imposta* (Rome, 1914), *passim*.

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scription to the net accretion criterion. It settles, in Ricci's opinion, the practical problems raised by the taxation of income.

Turning from practical affairs to economic science,[34] Ricci finds that the formulation of a true concept of income "must be preceded by acceptance of the postulates, (1) that income consists of consumption goods, and (2) that the flow of these consumption goods must be periodic, and further (3) that income must be limited to that portion of the flow which may be consumed without impairment of capital." If this concept is accepted, Ricci argues, a laborer's expenditures for subsistence are not income, because they represent necessary operating expenses if the capital value of labor is to be kept intact.

Reverting to an analysis of the income status of various accruals, Ricci observes that "certain types of accruals are not income. These are merely transfers of wealth and do not consitute new wealth for society as a whole." This passage, though not integrated with the remaining discussion, indicates that Ricci at least briefly considered incorporation of the net product criterion into one or the other of his concepts of income.

Loria,[35] who formulated his concept of income at approximately the same time as Ricci, asserts that ". . . the essential character of income is [represented by] its periodic reproduction for an indefinite term." For Loria "no consumable wealth which cannot be indefinitely reproduced is income, nor do those products constitute income which serve to redintegrate what is consumed." In terms of familiar terminology, it would seem that his concept of income is represented by a combination of the periodicity and the preservation-of-source criteria.[36]

Garelli [37] begins his discussion with the contention that the periodicity criterion should not be admitted as an income test.

[34] Ricci apparently uses the phrase *economic science* as a convenient synonym for utility mechanics.

[35] Loria, A., *The Economic Synthesis: A Study of the Laws of Income* (Eden Paul translation, London, 1914), pp. 35 *et seq.*

[36] *Supra*, p. 563.

[37] Garelli, A., "Il concetto di reddito nella scienza finanzaria", *Il Filangieri*, No. 42, 1917. Garelli's work was preceded by a survey of income taxation

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Like some earlier writers, he attempts to formulate a concept of income by drawing upon general principles but, unlike some later writers, he attempts a more detailed discussion of deduction and exemption procedures. He defines income as "the total wealth produced during a given period, which represents a net addition to the value of the original property of the owner." Though several interpretations of this definition seem possible, it may be justifiable to infer that he subscribes to the net accretion criterion delimited by the productivity test.

Further, Garelli distinguishes between two basic sources of income: capital and labor. From the gross income derived from capital, amortization, insurance against risks and the costs of administration are to be deductible. As regards permissible deductions from the gross income of labor, he argues that labor, to be productive of income, "must result in the transformation of energy in excess of the energy embodied in labor's product." Interpreted literally, this statement seems obscure. Interpreted more liberally, it might be taken to mean that only that part of the laborer's receipts which exceeds his necessary costs is to be considered income. If this interpretation is correct, Garelli, in effect, proposes to supplement his previous tests with the clear surplus criterion. This is to be realized by deducting from gross labor income, living expenses that must be incurred if the efficiency of the laborer is to be maintained and insurance premiums covering sickness, death and unemployment.

With regard to gifts, inheritances, gambling gains and lottery winnings, Garelli observes that they should be taxed as income. In passing it may be observed that there would seem to be nothing in the nature of these accruals that would lead one to believe that they typically fulfill the conditions required by the net product, the productivity and the clear surplus criteria.

undertaken by Clementini, P., and Bertelli, C., entitled *Le leggi sulla imposta di ricchezza mobile: Commentato* (3 vols., Turin, 1916). While valuable for its descriptive materials, the manual contributes nothing to the theory of income beyond the assertion that the periodicity criterion should not be incorporated into any concept of income. Vol. I, pp. 172 *et seq.*

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Lolini,[38] at one time affiliated with the Ministry of Finance, is chiefly concerned with the promulgation of rules designed to delimit what he considers a "practicable concept of income". According to these rules, income in order to be taxable must be expressible in terms of money; "considerations of utility and other subjective factors are not admissible." Further, "considerations relating to consumption expenditure and capitalization have to be ruled out." In addition, a "useful income concept must provide for the deduction of costs and a practical income concept must be framed in such fashion as to prevent capital and windfall gains from being classed as taxable income."

Graziani's[39] contribution to the literature of the concept of income was exceedingly brief. He contents himself with the assertion that concepts of income should include the periodicity and the preservation-of-source criteria.

Among the three remaining authors of the period—Fubini, Pugliese and de Viti—who subscribed to some concept of the accrual type, only de Viti offers what seems a novel observation. Fubini,[40] like Lolini, is primarily concerned with the formulation of rules, which in his opinion ought to be observed by designers of concepts of income. Pugliese[41] rests his case upon endorsement of the net accretion criterion. De Viti,[42] professor of public finance at the University of Rome, on the other hand, promulgates an "axiom", which is interesting by virtue of the fact that it represents a resurrection of the *quid pro quo* principle.[43] He boldly asserts: "the basic theory

[38] Lolini, E., "Il concetto di reddito in finanza ed in economia pura", *Revista Italiana di Sociologia*, 1916, *passim.*

[39] Graziani, A., *Istituzioni di economia politica* (Turin, 1925), *passim.*

[40] Fubini, R., "Contributo al determinazione del concetto di imposta generale sul reddito", *Giornale degli Economisti*, May 1932, pp. 297 *et seq.*

[41] Pugliese, M., *I concetti di reddito e di entrata in economia ed in finanza* (Padua, 1930), *passim.*

[42] de Viti de Marco, A., *I primi principii dell'economia finanzaria*, German translation, *Grundlehren der Finanzwissenschaft* (Tübingen, 1932), *passim.*

[43] Professor Seligman has gone to considerable length to show that the income tax cannot be justified by reference to the *quid pro quo* principle. See Seligman, E. R. A., *The Income Tax* (New York, 1911), *passim.* Sir Josiah

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of taxation is at present: the income [apparently defined in terms of the net-accretion criterion] of the citizen is the measure of his demand for public services and therefore taxes are levied as a percentage of income." [44]

While the various income concepts sketched above were being evolved, there emerged in Italy a school of economists whose approach to the problem of income definition was fundamentally different. The writers discussed so far proceed on the assumption that income, no matter how delimited by the introduction of various criteria, is to be conceived of as something which accrues to individuals. To borrow a term from Alfred Marshall, they all look toward the "comings in". The members of the group now to be considered chose to orient their speculations in the opposite direction. They all look toward the disposition of accruals when they attempt to frame definitions of income. They regard Einaudi [45] as their leader and lean heavily upon Irving Fisher and John Stuart Mill for both doctrinal nutriment and stimulation.

Einaudi and his disciples seem to reject income concepts of the accrual type on two grounds. First, they claim that real income consists of a "flow of gratifications or pleasurable events". Second, they allege that adoption of any one of the concepts of the accrual type inevitably leads to undesirable double taxation. These two claims represent the foundation upon which they attempt to build their respective concepts of income.[46]

Stamp, working five years later, would seem to take it for granted that the income tax must be justified by reference to the ability principle. See Stamp, J. C., *British Incomes and Property* (London, 1916), *passim*. Also Stamp, *Wealth and Taxable Capacity* (London, 1922), *passim*.

[44] While this statement may seem startling and contrary to fact to a person who has been reared on a diet of Anglo-American literature, served in democratic surroundings, it may well describe the situation in contemporary Italy. See Sturzo, *Italy and Fascismo, passim*. For a popular but illuminating article on the same topic, see *Fortune*, vol. 10, no. 1, July 1934, pp. 45-150.

[45] Einaudi, L., *Intorno al concetto di reddito imponible e di un sistema d'imposte sul reddito consummato* (Turin, 1912), *passim*.

[46] The first claim is, of course, only in the nature of one of many possible definitions of income. The second claim is but a logical derivative of one possible concept of either equity or progress. The second proposition had been

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Einaudi after acknowledging his debt to Mill and Fisher attempts to refine the latter's concept of income.[47] As a first move, he establishes three expenditure categories. For want of a standard phraseology, these categories may be designated as "productive expenditure", "maintenance expenditure" and "true expenditure". The phrase productive expenditure covers all expenditures which may reasonably be presumed to perpetuate the productive powers of labor. Monies spent for food, clothing, shelter and the education of a minor would seem to be productive in the sense in which Einaudi uses that term. The term maintenance expenditure, on the other hand, seemingly designates the expenditure which an active worker must incur if he is to maintain his capital value intact. True expenditures are represented by all other outlays, which do not fall into either one of the other two categories. Savings, however, are assigned a category of their own.

Upon the establishment of these categories, Einaudi defines income by the simple expedient of equating income and true expenditure,[48] but he seems to realize that his "theoretical" concept of income cannot very well be pressed into service in connection with anything as "practical" as a fiscal statute. In fact, he admits that adoption of the "pure consumption" base would constitute a "supernatural deed", an achievement pre-

put forward previously by John Stuart Mill, who defended it as follows: ". . . for when saved and invested . . . it [income] thenceforth pays income tax on the interest or profit which it brings, notwithstanding that it has already been taxed on the principal. Unless, therefore, savings are exempt from income tax, the contributors are twice taxed on what they save and only once on what they spend." Mill, *Principles of Political Economy* (Ashley edition, London, 1926), p. 813. Sir Josiah Stamp, commenting upon Mill's observation, points out: "When you consume an income from savings, you consume something larger than you would have consumed if you had spent the original money instead of saving it. This something more is the economic reward of waiting or compensation for abstinence. That reward is a kind of income, and there is no reason why the income earned from waiting or abstinence should not be charged like any other income." *The Fundamental Principles of Taxation in the Light of Modern Developments* (London, 1929), p. 58.

[47] *Cf.* Wueller, "Concepts of Taxable Income II", pp. 572 *et seq.*

[48] It would seem that there is somewhat of a similarity between Einaudi's concept of income and the clear surplus criterion.

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supposing a type of citizen who, if he wished, could make a fiscal system "almost unnecessary". Yet, Einaudi insists that a tax system designed with a view to using the expenditure base extensively is preferable to a system that aims at extensive exploitation of the accrual base. In support of this contention, he marshals a variety of "reasons".

He continues to argue that incorporation into fiscal statute of concepts of income of the accrual type inevitably leads to double taxation of savings [49] and that whenever an income tax is patterned after a concept of the accrual type, fraud and evasion are the inevitable companions of the tax collector. Though he admits that taxes on expenditure may be evaded and avoided, he asserts that ". . . if the taxpayer avoids the expenditure tax by means of abstention from current consumption, his act hurts him as much as it hurts the State." Besides, "abstinence is a much higher type of act and preferable to smuggling, fraud, emigration of men and capital, revolt and revolution."

For Einaudi, concepts of income of the disposition type are preferable to concepts of the accrual type, but he is convinced that his own concept is superior to all those broader concepts which equate income and consumption expenditure. He argues: "By taxing only secondary desires ["secondary desires" are those desires which prompt true expenditures], the State affects the prices . . . of only those goods which are not desirable. If the tax increases the price of luxury goods the consumers will spend proportionately more for socially desirable products."

Among the Italian economists who endorse Einaudi's true expenditure or pure consumption criterion are: Prato,[50] professor of political economy at the Royal Institute of Commerce in Turin; Cabiati,[51] professor of political economy at the Royal

[49] *Cf.* Wueller, "Concepts of Taxable Income II", p. 578 note 84; also Graves, C. H., "A Note on Irving Fisher's Concept of Income", *Econometrica*, October 1939, vol. 7, pp. 349-356.

[50] Prato, G., "Di alcune recenti teorie sul capitale e sul reddito e delle loro consequenze tributarie", *Riforma Sociale*, 1912, *passim*.

[51] Cabiati, A., "La funzione economica del sovraprezzo e del premio e la tassazione", *Riforma Sociale*, 1909, *passim*.

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Superior Institute of Economic and Commercial Sciences in Genoa; Masci,[52] professor of political economy and statistics at the Royal University of Naples; Borgatta,[53] professor of public finance at the Royal University of Milan; Flora, professor of public finance at the University of Bologna; [54] and Fasiani,[55] professor of public finance at the Royal Superior Institute of Economic and Commercial Sciences in Genoa.

Apparently the only writer to break the monotony of laconic endorsement is d'Albergo,[56] professor at the Catholic Institute of Milan and at the Royal Superior Institute of Economic Science in Venice. He prefaces his remarks with the observation that the very institution of income taxation, in accordance with any one of the concepts of income of the accrual type, is on trial. Income taxation, the world over but particularly in Italy, is facing a crisis. In d'Albergo's opinion the crisis has been brought on by three distinct forces working toward the same end: (1) the widespread acclaim of expenditure as the best measure of true income, (2) a marked tendency on the part of the electorate to use income taxes fashioned after concepts of the accrual type to level off incomes which are deemed excessive, and (3) the "dire necessity" of encouraging production. For d'Albergo, encouragement of production presupposes effective encouragement of the saving habit.

Continuing his attempt to appraise alternative types of income taxes, he observes that in contemporary society, production tends to be carried on by corporate entities. Hence, "it represents a departure from actual fact to assign to the individual a productive rôle", and an income tax of the accrual type appears "irrational", because it is levied against "persons who do not produce". An income tax patterned after

[52] Masci, G., *Il concetto e la definizione del reddito* (Naples, 1913), *passim.*

[53] Borgatta, G., "Contributi critici alla finanza teoretica (A proposito di una Memoria di Luigi Einaudi)", *Giornale degli Economisti*, August 1920, *passim.*

[54] Flora, F., *Manuale della scienza delle finanze* (Livorno, 1921), *passim.*

[55] Fasiani, M., "Sulla doppia tassazione del Risparmio", *Riforma Sociale*, March-April 1928, *passim.*

[56] d'Albergo, E., *La crisi dell'imposta personale sul reddito* (Padua, 1931), *passim.*

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a concept of the accrual type is "inquisitorial" and hence objectionable.

Turning from the discussion of the demerits of the conventional income tax to the merits of a tax modeled after a concept of the disposition type, d'Albergo points to the following principal advantages of the second: elimination of double taxation of savings, measurement of "true" taxable capacity, and encouragement of production. Continuing his catalogue, he maintains that the expenditure base would be fiscally more productive, because "eighty-five per cent of Italy's national income is consumed."

Though Einaudi's approach received some recognition from students, it did not go altogether unchallenged. The list of dissenters includes Trevisonno,[57] who, however, contents himself with simply questioning the desirability of encouraging saving at the expense of consumption. Fanno,[58] likewise, merely asserts that savings, contrary to Einaudi's contention, constitute income and should be taxable as such. Loria,[59] apparently granting Einaudi's approach for argument's sake, insists that such part of a person's pure consumption as is financed by means of conversion of capital assets is not to be considered income.[60] Salerno [61] observes that if one subscribes to the utility approach, which he imputes to Mill, Fisher and Einaudi, savings cannot be held to differ significantly from spendings.[62] He further contends that the double taxation doctrine is not pertinent, because income taxes patterned after some concept of income of the accrual type are typically justified by reference to the least or minimum sacrifice principle, a principle which is applicable only to income recipients and not to income, irrespective of recipients, no matter how one chooses to define the term income.

[57] Trevisonno, N., "Per un sistema d'imposta sul reddito consummato", *Giornale degli Economisti*, 1913, p. 230.

[58] Fanno, M., *Elementi di scienza della finanze* (Turin, 1932), *passim.*

[59] Loria, A., "A proposito di un teorema di L. Einaudi", *Riforma Sociale*, 1912, *passim.*

[60] *Cf. supra*, p. 567.

[61] Salerno, P. R., *Il risparmio nel sistema tributario* (Palermo, 1928), *passim.*

[62] Wueller, "Concepts of Taxable Income II", p. 574.

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Griziotti,[63] like Salerno, believes that Einaudi's position with regard to the double taxation of savings is open to criticism. Unlike Salerno, however, who seems inclined to rule the double taxation in question out of order, Griziotti proceeds to justify heavier taxation of that portion of a given individual's income which is saved. He considers it axiomatic that "objectionable double taxation" exists only when "two levies are imposed, though there is but one justification to tax." Reasoning from this postulate, the author concludes that whatever double taxation of savings exists represents "justifiable double taxation", because "the taxpayer requires the services of the State when the income is first produced . . . and likewise, he [the taxpayer] requires the State's aid when he receives his second income, the fruit of his savings."

In passing, it should be observed that Griziotti is the second writer who re-asserts the *quid pro quo* canon in an attempt to justify some feature of income taxation in accordance with the requirements of some concept of income of the accrual type.[64]

Comparing the Italian contribution[65] to the literature of concepts of taxable income with that of American and German students, some likenesses and differences become apparent. In the first place, Italian contributors like American, but unlike German scholars, fall into two distinct groups: those who choose to design concepts of the accrual type and those who fashion concepts of the disposition type. Second, the Italian exponents of concepts of the accrual type operate with the same criteria as their American and German confrères. However, the disposition school offers an entirely new income test—the pure consumption criterion. Third, though advocacy of concepts of the disposition type has been relatively frequent with Italian economists, no evidence has been unearthed which

[63] Griziotti, B., *Studi di diritto tributario* (Padua, 1931), *passim.*

[64] See *supra*, p. 569 and note 43.

[65] In this connection it may be permissible to reiterate (See Wueller, "Concepts of Taxable Income I", p. 83) that it has not been the purpose of this and preceding articles to present a complete compilation of concepts of taxable income. Rather, the purpose has been to sketch the content of the contributions of students who represent interesting and divergent currents of thought.

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would indicate serious impact of this approach upon Italy's fiscal institutions. Fourth, many Italian proponents of concepts of income, like some of their American and German predecessors and contemporaries, apparently fail to distinguish among possible alternative objectives of concepts of taxable income. Perusal of the various contributions would seem to lend justification to the belief, that some Italian writers aimed at the formulation of concepts which promised to be consistent with their basic doctrinal orientation. Others either attempted constructions which bade well to serve adequately as redistribution agents of income, or essayed definitions which, if incorporated into fiscal statutes, would tend to accelerate the growth of Italy's national income. Fifth, though some American and German contributors were at times interested in the relationship between concepts of taxable income and the growth of national income, many Italian students considered this relationship a major problem of income taxation. Sixth, it seems to have been an article of faith of those Italian students who were seemingly preoccupied with the growth of their nation's income that the granting of fiscal immunity to savings could be relied upon to accelerate the rate of capital formation, and through more rapid capital formation, to assure more rapidly rising levels of income and welfare.

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THE EMERGENCE OF UNEMPLOYMENT COMPENSATION III

THE unemployment benefit provisions of the unemployment compensation laws have emerged from the minor status accorded them in the earliest deliberations on the subject in this country, but their growth in importance has not yet served to make their theoretical basis explicit. Despite modification of method from time to time the discussion of the underlying principles of the provisions has lagged behind inconspicuously.

In the first Wisconsin bills, benefits were obviously regarded as a very incidental phase of the contemplated unemployment prevention system. Compensation was to be placed "so low that the workman has no expectation of more than enough to pay his rent."[115] The 1921 Huber bills met this condition by fixing a benefit rate for adult workers, first of $1.50, then of $1 a day. Through use of a "ratio rule"[116] affording one week of benefit for every four weeks of employment prior to the start of unemployment, benefit duration was made proportional to length of employment, though it could not exceed thirteen weeks in a calendar year. These benefits were purposely low so that the claimant's incentive to seek work would not be impaired, while the rate of payment was uniform, or "flat", for all claimants, apparently in casual imitation of the British system.[117] But the theoretical place of the provisions in the total unemployment prevention system was not

[115] Commons, John R., *Unemployment Insurance: The Road to Prevention* (published by the Wisconsin Association for the Prevention of Unemployment), p. 8.

[116] So-called in Great Britain where 1 week of benefit for 6 weekly contributions was available between 1913 and 1921.

[117] British benefits have always been paid in flat amounts for adults and juveniles and for each sex. Since 1921, additional flat amounts have been available for dependents. In this country, compensation for temporary total disability has been paid at flat rates under the Washington and Wyoming workmen's compensation acts since 1911 and 1915, respectively.

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obvious. The writers of a National Industrial Conference Board report, in fact, questioned whether the system actually required unemployment benefits:

> It may well be asked whether it is economical to set up a large organization so vitally affecting industry and the workers and controlling their activities, if it does not provide adequate relief for the percentage of workers inevitably out of work under however efficient application of preventive measures; and whether such relief could be provided by larger benefits without greatly overburdening industry or producing malingering. Would not the preventive intention of the legislation be more simply and directly realized by some system of direct unemployment taxation, since this is what the legislation is actually designed to effect and what it would amount to in practice?[118]

Later Huber bills altered the form of the benefits, if not their nominal value. Under the 1925 bill, the $1 daily benefit was not to result in a weekly payment in excess of sixty-five per cent of "the worker's usual remuneration or wage in his last employment." Mathematically, this meant that the flat daily rate was to apply only to workers earning over $9.23 a week; for the remainder, the rate, like the duration, was proportioned. Similar benefits, partially individualized in terms of weekly wages, were features of the then current state workmen's compensation acts which usually compensated temporary total disability at rates from 50 to 66⅔ per cent of wages.[119] However, for several reasons, the analogy with workmen's compensation was much restricted. First, the maximum rates also found in workmen's compensation were more liberal, inasmuch as they ranged from $15 to $30 a week.[120] Secondly, the pro-

[118] *Unemployment Insurance in Theory and Practice* (New York, 1922), p. 113.

[119] Under these laws, average weekly earnings were computed on the basis of total earnings within a year or less preceding the injury. See Dodd, W. F., *Administration of Workmen's Compensation* (New York, 1936), pp. 649-662.

[120] Various theoretical justifications of the maximum are possible. A $15 maximum coupled with a 50 per cent benefit rate may imply: (1) that it is desired to economize expenditure in general; (2) that $15 is adequate for workers earning over $30 a week; or (3) that the sums withheld from the better-paid workers may be applied in more adequate payments to the lower-

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vision of a minimum as well as a maximum rate in workmen's compensation indicated consideration of the needs of the lowest-paid workers.[121] Thirdly, the maximum duration was generally set at several hundred weeks, or was limited by a maximum sum payable of several thousand dollars, whereas by the proportionate duration of the Huber bills the maximum would frequently have been below thirteen weeks.

Lacking the prima facie liberality of the workmen's compensation acts, the Huber bills reflected our repugnance toward the European "dole" systems that rose in the twenties. But even genuinely American provisions were apparently to be avoided if cognate to the European relief philosophy. The fact that benefit rates were increased according to the number of dependents of the injured employee under the workmen's compensation acts of Alabama, Arizona, Idaho, Illinois, Washington and Wyoming never served to introduce the idea of such benefits into unemployment compensation (or to attach the brand of "dole" to workmen's compensation). On the other hand, it seems accepted — not only in America — that social service measures must be cast timorously, in apprehension of the worst possible fiscal consequences, and then liberalized under hammering.[122] In view of the experience accumulated under the emergency relief systems thrown up in the thirties, another approach would have been remarkable. Unemployment compensation might have proved less attractive had it been offered merely as a more efficient and orderly system than

paid workers. Since the Wisconsin bills were unconcerned with the question of the adequacy of benefits, only the first interpretation of the maximum device could be applied to them.

[121] The workmen's compensation statutes employed two types of minimum provision both of which resulted in proportionately higher benefits for the lowest-paid workers. The first, more common minimum was either a flat sum, or the claimant's wages, whichever was lower; the second was simply a flat sum, from $5 to $8, depending on the state.

[122] "Since the original compensation acts were passed, the legal basis for the payment of compensation has been broadened, and the benefit scales have been lifted to higher levels." Dawson, Marshall, "Adequacy of Benefit Payments under Workmen's Compensation", *Monthly Labor Review*, September 1938, p. 463. The liberalization of the federal old-age insurance payment schedules in August 1939 is another example.

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relief, with no resultant economy. Accordingly, the benefit provisions of the proposals after 1930, though nominally somewhat more liberal, continued to be designed to prevent high expenditure as well as unemployment. The American Plan differed from the Huber bills in putting the weekly rate at sixty per cent of wages, up to $10, and in providing that payments from any industry fund were to be adjustable "so that such fund shall always remain solvent."[123] Solvency thus appeared as the guarantee that the undesired relief element would be excluded.[124] Concurrently, the mounting indebtedness of the British insurance fund was interpreted as an expression of its insolvency and of the degeneration of its benefit payments into relief "doles".

Full precautions against excessive benefit expenditure were taken in the Wisconsin law of 1932. Despite the fact that no employer reserve fund bore the risks of any other fund, each was afforded the additional protection of a provision linking the benefit rate with the size of the fund: Benefits were to start at fifty per cent of wages, but for every $5 drop below $50 in the amount of average "reserve per employee" of a fund, the weekly benefit paid for that fund was to decrease by $1. There was also a $5 minimum rate, which was repealed in July 1937, and a $15 maximum; beneficiaries who attended vocational classes could qualify for an additional $1 per week.

The implicit solicitude for solvency was not unrelated to the question of the deprecated dole. As a full-fledged epithet, the dole seemed too obvious a term to warrant precise definition. It had been applied to the British system apparently because the insurance fund had run into debt to the state and because certain sectors of the unemployed had received larger amounts of benefit than they would have expected on the basis of the provisions of the 1920 law. By this line of reasoning, the Wisconsin system could never produce a dole: in no generation or phase of the business cycle could the unemployed be taken by surprise with a state-granted windfall, the reserve funds could run out only with extreme difficulty, and the state's purse

[123] *American Labor Legislation Review*, December 1930, p. 355.

[124] See *ibid.*, p. 349.

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could not be involved. Yet the Wisconsin worker would get his benefit, small as it was, in return for no direct contribution, whereas the British worker actually contributed toward his benefit. It might have been maintained, therefore, that the Wisconsin employer was being compelled to pay parsimonious doles to his employees. However, the palpable limits on the payments and the individuality of the reserve funds fostered a resemblance to private, rather than to public, charity and so shielded the system against contumely. The dole thus arose only when the state participated in an alleviative grant to the extent of incurring large deficits: its existence depended more on the nature of the whole system than on the nature of the payment to an individual.

The bill proposed by the Ohio unemployment insurance commission was very liberal compared to the Wisconsin act. Benefits were to be paid at the rate of fifty per cent of "average weekly wages", not exceeding $15 a week. The maximum period of the payment, unlike any other American plan, was to be a flat sixteen weeks—"sixteen times the weekly benefit amount"—unlimited by any ratio rule. But this schedule of payment was not indefinitely fixed, for the Commission also prescribed that the administration be empowered, if the fund fell below "a proper actuarial basis" during general and extended unemployment, "to borrow funds . . . on the security of the resources of the fund, and/or to adjust the benefits; either in their weekly amount or in the length of time for which they should be paid, until such time as the fund is restored to a sound and actuarial basis." [125] These provisions, together with contributions by the direct beneficiaries and complete pooling, made for a system which was distinctly insurance in character, but which exhibited traces of private as well as social insurance doctrines.

By 1934 it could be said the keynote of the American discussion of benefits was the proposition that they were not to endanger the solvency of the funds, pooled or otherwise, from

[125] *Report of the Ohio Commission on Unemployment Insurance*, p. 72.

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which they were derived.[126] As this attitude solidified, it could be seen that unemployment compensation would touch only a small proportion of the unemployed and even these for a relatively short time. There was, on the whole, little effective consideration of an extended benefit system to deal with the needy unemployed as they exhausted their benefit rights or failed to meet eligibility requirements. The view taken by the Committee on Economic Security, that unemployment compensation was to constitute only a "first line of defense" and that "work benefit" was to provide for the workers who suffered abnormal unemployment, was reflected in the Committee's acceptance of the restrictive methodology of benefit payment developed by the American discussion. The Committee's model bills suggested a fifty per cent benefit rate, with a $15 maximum. The adoption of the liberalizing minimum rate was left to the disposition of the states. Benefit duration was related to length of employment as in the Wisconsin act, and a maximum of less than sixteen weeks was advised if in 1922-1930 the state "had more unemployment than the average for the United States".[127] The flat duration plan of the Ohio bill was not included among the experimental implements described by the Committee. But a new, unrestrictive clause, granting an additional week of benefit for every twenty weeks of employment during the five years preceding unemployment, was recommended for the rather vague reason that employees drawing no benefit for a number of years "will have an especially valid claim to the additional benefits provided here, when because of a depression or technological change, they lose their jobs and are unable to find other work."

Apart from these benefit devices, the Committee took no steps to guarantee solvency. It merely recommended that the administrative commission advise the governor and legislature whenever changes either in benefits or contributions proved

[126] With the introduction of formal actuarial considerations, a further degree of protection was given the funds by lengthening of the waiting period before benefits could begin from 3 days in the Huber bills (as in the British system) to 2 weeks in the Wisconsin act and 3 weeks in the Ohio Plan.

[127] *Hearings before the Senate Committee on Finance* (1935), p. 599.

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necessary. But the governing principle of a solvent system was clearly expressed by Professor Witte, the Committee's Executive Director:

> Coming . . . to the concept of unemployment compensation, we regard it as merely a measure to give a limited benefit to employees during a period while they have a reasonable opportunity to be taken back within a short time in their old positions. Unemployment compensation, if it is not to be mere relief, must be based on the contributions that are received. Unless the contribution rates are extremely high, the period during which compensation can be paid will necessarily be quite limited. . . . Unemployment compensation as we conceive it is something that the man should get in cash during such a period as can be paid for by the contributions.[128]

The benefit provisions of the six state unemployment compensation systems established in 1935 revealed the influence of the Committee on Economic Security and to a lesser extent other American sources. Every system set the weekly benefit rate at fifty per cent of "full-time weekly wages", up to $15. But, with one exception, they included minima of two types: the minimum rate in four laws was "flat"—$5 and $7—and in two laws, "alternative"—$5 or seventy per cent of wages and $7 or seventy-five per cent of wages. Proportional benefit duration was provided according to given ratio rules, with overriding maxima of ten to sixteen weeks in the different laws. Additional weeks of benefit for long-time workers were available in four systems through the second ratio rule recommended by the Committee, but California granted twenty additional weeks on the strength of 103 contributions without the further application of a ratio. Other Committee provisos appeared in the Massachusetts and Rhode Island laws which in certain instances gave workers the option of a lump sum payment in lieu of weekly payments.[129] By another Massachusetts provision, benefit duration was computed according to three ratio rules: 1:4, 1:18 and 1:24 for employment in the last two, last six and earlier years prior to the start of unemploy-

[128] *Ibid.*, pp. 215-216.

[129] A workmen's compensation provision now repealed in both states.

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ment, respectively. In Wisconsin, an amended benefit provision set up three ratios: 1:4, 1:5 and 1:6, according as the benefit rate was $10 or less, $12.50 and $15, respectively.[130] Additional benefits for dependents were made available only under the District of Columbia measure.[131]

None of the new systems appeared to intend adherence to the specified benefit scales in the event that their funds ran short. The Massachusetts and New Hampshire administrative commissions could then make any necessary change in benefits, waiting period or eligibility conditions. California empowered its commission to reduce or cease the payment of benefits.[132] The New York pooled fund was qualified by the following provision: "The state of New York undertakes the administration of such fund without any liability on the part of the state beyond the amount of moneys received through allotment from the federal social insurance board or other federal agency."[133] The Alabama and District acts provided that the administration recommend changes in benefits or contributions whenever necessary.

There was no important change in the type of benefit provision enacted immediately after the publication of the federal draft bills of January 1936. The benefit formulas suggested in the bills were similar to those of the Committee on Economic Security, though the Board introduced an alternative minimum rate, namely, "$5.00 or three fourths of the full-time weekly

[130] Laws of Wisconsin, 1935, ch. 192.

[131] Beginning at 40 per cent of wages for workers without dependents, the rate increased with the number of dependents as far as 65 per cent.

[132] Repealed in 1939.

[133] In 1922, when New York repealed a clause denying the state's liability to maintain the solvency of its workmen's compensation fund, it became hypothetically liable to meet claims for compensation in the event of a depleted fund. See Dodd, W. F., *op. cit.*, p. 537. But the liability assumed by the state is obviously not as important in workmen's compensation as in unemployment compensation. It is very unlikely that any state fund will ever be bankrupted by a flood of accidents. Though a flood of unemployment is now not a speculative contingency, the concern for solvency in unemployment compensation may still have been overwrought. Insolvency, quoting Professor Kulp, may be "technical" in the sense that it can be removed through the state's power to adjust the premium income. See Kulp, Clarence A., *Casualty Insurance* (New York, 1928), p. 176.

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wage, whichever is the lesser." [134] The eight laws enacted in the first ten months of the year now displayed great uniformity. In each, the benefit rate was fifty per cent of weekly wages, not to exceed $15. Six laws adopted alternative minima, and one a flat minimum. All determined proportional benefit duration by ratio rules of 1:4 for employment in the last two years and 1:20 for earlier employment. The liability for benefit payment continued to be restricted to the resources represented by the contributions. Three states adopted the solvency provision of the Committee on Economic Security, reproduced in the Board's draft bills. Rhode Island empowered the governor, on the recommendation of the unemployment insurance administration, to alter benefit rates in order to safeguard solvency. Three states incorporated a provision of the second edition of the draft bills, stipulating that "there shall be provided if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions." [135]

Thus, up to November 1936, the formulation of the benefit provisions was governed by the very general aims attached to unemployment compensation. Whether benefit payment was subsidiary to unemployment prevention as in the Wisconsin system or concomitant as in the pooled systems, it was to be disbursed among the benefit claimants in a restricted manner and limited to the amount of contributions or less. The particular devices embodied in the benefit formulas tended to retard the flow of benefits or, in any event, could not be held seriously liberal in effect. Moreover, the general objective of providing benefits for a short interim period of unemployment was unaccompanied by a theory which fully justified the differing treatment accorded to individuals.[136] There was only the

[134] The Board noted that by the last phrase of this provision "an employee will always receive substantially less benefits than he could earn in wages." January 1937 draft bills, p. 15.

[135] *Ibid.*, p. 52.

[136] Whether such a theory can be constructed is problematic. Professor J. Douglas Brown, in an effort to justify differential benefits, states: "With benefits related to past wages, it is possible to provide reasonable protection to workers of widely varying wage levels without reducing the incentive to return to employment or to exercise self-encouraged thrift. No matter at what

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assurance that for a majority of the claimants the rate would be distant from their wages.

In the absence of more substantial theoretical support, it was not surprising that the initial benefit devices were almost all abandoned under the first shock of administrative reality in 1936. The start of tax collections in this year had immediately been followed by a rising volume of complaints from employers regarding the onerous record-keeping and reporting duties imposed on them by the new laws. Endeavoring to carry out provisions for relating benefits to "full-time weekly wages", the state administrations had requested monthly returns from employers with data on the hourly rates of pay, number of hours worked each week, earnings each week, etc., of individuals in their employ. The complexity and costliness of these returns led to the complaints and to consideration of alternative methods that might reduce the volume and frequency of reporting. A practical solution appeared to lie in the use of the wages earned in a specified calendar quarter as the main method of determining the full-time weekly wage and the weekly benefit rate.[137] The new draft bills issued by the Social Security Board in January 1937, after preliminary copies had been made available to the states, defined the full-

level flat rates of benefit are set, such rates will afford inadequate protection for some while approximating full wages for others." ("Some Inherent Problems of Social Security", *The Annals*, March 1939, p. 2.) But other than to say that the minimum rate should be "socially expedient" and the maximum rate "economically justifiable", he does not consider the problem of choosing from among the innumerable differential formulas possible. The location of the minimum and the maximum and the proportion that benefits constitute of wages vitally affect the formula, or the nature of the differentiation. Furthermore, the differentiation also depends on the period over which the wages of the individual are recorded.

[137] Neither employer reporting nor administrative computation had presented complications in the case of employees receiving a fixed salary. But with variation in the weekly pay, or if payment was not by the week, the employer could not offhand write down the employee's full-time weekly wage. The procedure was then to establish the "full-time weekly hours" and the "hourly rate of earnings", both by arbitrary arithmetical operations, and the product of the results was the full-time weekly wage, half of which gave the weekly benefit rate. Other, discretionary methods of determining the full-time weekly wage, involving "customary" wages, were also available. See January 1936 draft bills, pp. 4-6.

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time weekly wage as one thirteenth of the highest quarterly earnings in the "base period"—the first eight of the nine completed calendar quarters prior to any week with respect to which benefits were payable. Essentially the same method of benefit determination was also worked out at this time by a Connecticut commission, which, however, dropped the term "full-time weekly wage" and stated the benefit rate merely as four per cent [138] of the quarterly wage.

The shift to the quarterly wage basis for rate computation also necessitated revision of the benefit duration formulas. Since the employers were now relieved of the responsibility of keeping track of the time worked by their employees, the ratio rules sank from sight. In their stead, the draft bills recommended that the duration in any "benefit year" be decided by a given multiple of the weekly benefit rate, or one sixth of earnings in the base period, whichever was less.[139] With this provision, the employer needed only to report the total earnings of his employees once each calendar quarter in order to enable the state to determine both the weekly and the total benefit amount of his employees. In the next two years, nearly all of the new enactments and fourteen of the earlier ones adopted the remodeled provisions.[140] Most states followed the draft bill pattern, though the numerical details of the formulas varied. The majority included the alternative minimum rate, all but one set the percentage rate at fifty per cent of the full-time weekly wage or four per cent of quarterly wages, and all but two, a maximum of $15.[141] The most popular duration

[138] I. e., one twenty-fifth. See *Report of Governor's Commission on Unemployment Compensation* (Connecticut, November 1936), pp. 21 and 23. The Board's benefit rate approximated one twenty-sixth of the quarterly wage.

[139] January 1937 draft bills, p. 18. It was up to the states to decide what the multiple would be. The latter alternative ensured that benefit duration would be proportional to earnings in the base period. But since earnings above $390 per quarter were not creditable, only individuals who earned less could actually receive one sixth of earnings, or, in other words, $1 in benefit for each $6 of earnings.

[140] Hawaii and South Carolina dropped the old ratio provisions in 1939, leaving them in effect only in the District of Columbia and Wisconsin.

[141] See *A Comparison of State Unemployment Compensation Laws* (October 1937), pp. 25-26. Wyoming set the percentage rate at 60 per cent and the

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formula limited yearly benefits to sixteen times the weekly benefit amount (i.e., sixteen weeks of total unemployment benefit), or one sixth of wages credited in the base period, whichever was less. Ohio, on the other hand, simply provided for a uniform, flat duration of sixteen weeks of benefit, without any alternative. Only Massachusetts sought to preserve the concept of additional benefits for the long-time employed by granting benefits up to one eighth of wages in the two years prior to unemployment, plus three per cent of wages in the preceding sixteen calendar quarters and two per cent of yet earlier wages—an effort which was abandoned in a 1939 amendment.

For the most part, the states followed the draft bills in drawing up their solvency provisions. Iowa, Minnesota, New Mexico, North Dakota and Washington wrote parts of the draft provision into their laws. Missouri, in addition to the latter, specifically enjoined against issuing bonds or borrowing for purposes of benefit payment.[142] By amendments in 1937 New Hampshire repealed the clause empowering its commission to reduce benefit rates and substituted the draft provisions, while Ohio revoked the commission's power to borrow on the security of the fund's resources.

These changes in the benefit provisions during 1936 and 1937 were accomplished without running counter to the general attitude that benefits should be limited to contributions and incapable of menacing solvency. Through alteration of the formulas for computing payment, the relative treatment accorded to the individual members of the system was affected, but the possible total weight of unemployment benefit expenditure probably changed insignificantly. The first modification of the provisions was decreed by an administrative issue that involved the contributing employers rather than the benefit recipients. Neither the place of benefits in the unemployment

maximum at $18. Michigan adopted a $16 maximum. Louisiana, by a 1938 amendment, made the maximum $18. In applying the benefit formulas, 17 states began to compute the rates to the nearest dollar, half-dollar, etc. See *A Comparison of State Unemployment Compensation Laws* (August 1938), p. 58.

[142] S. B. No. 36, Laws of 1937, Sec. 18.

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assistance picture nor the theory governing their distribution among individuals was important at this juncture.[143]

III. *The Legislation in 1938 and 1939*

In advocating an "experimental" development of unemployment compensation in 1934, the Committee on Economic Security had not presented explicit criteria to guide the experimentation by indicating how particular provisions should be adjudged and when amended. Subsequently, the Social Security Board had held that change should occur in the light of "experience", refraining from elaboration of the nature or extent of the needed experience. Lacking an unambiguous program of development, the state administrators had assumed the attitude that administrative exigencies were sufficient pretexts for amendment. We have seen how a strictly practical issue brought new provisions and amendment in 1936 and 1937. In the next two years, although labor and employers exerted a strong influence, the practical considerations of the administrators, bent on the performance of immediate duties, again proved a major force making for change.

[143] The discussion in this and the preceding article has been confined to the principal phases of the contributory and benefits provisions drafted in the "emergent" period of the unemployment compensation acts, 1935-1937. Had space permitted, other significant aspects of the provisions—relating to eligibility conditions for benefit, partial unemployment benefit and waiting period—might profitably have been considered. Broadly speaking, these provisions emerged in somewhat the same expedient fashion, by virtue of similar lines of reasoning as the provisions described. With the shift from the "time" to the "quarterly wage" basis of computing benefit payment, the eligibility and partial benefit provisions underwent basic alteration and the treatment accorded individual beneficiaries was automatically modified: a given individual received more or less in benefits, became eligible or ineligible, not directly through consideration of the necessity of varying the treatment, but as a reverberation of payroll reporting—an issue at second remove. Indeed, so mechanical was the change in the important eligibility condition that in 1938 the draft bill provision was discovered to be nonsensical with respect to many claimants, who could not fail to be eligible. See Social Security Board, *Quantitative Analysis of Unemployment Compensation Simplification Proposals* (Washington, 1938), p. 14. All these provisions were further obliquely affected by the forces that arose during the first full year of benefit payment, 1938. The effect of these forces on the principal provisions forms the concluding section of this paper.

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The state amendments of 1939 were cast in the light of the experience obtained in the previous year which had marked the start of benefit payment for thirty systems and which had not been a favorable year for trying out the new model benefit provisions. Owing to the "recession" of 1937, unexpectedly large numbers of unemployed filed claims for benefit in January 1938. Unfortunately, the administrative organizations were still incomplete, the personnel green,[144] and the procedures for effecting benefit payment rough hewn. It was not astonishing, then, that at the outset the state administrations were often unable to process their benefit claim loads rapidly and smoothly, giving evidence of delayed and inaccurate payment and even inability to make the payment. Such difficulties might within reason have been attributed to general inexperience, but there was no expressed confidence that improved office mechanics offered a prompt solution. Whether in self-defense or in order to accelerate the payment of the unemployed,[145] the unemployment compensation officials seemed to prefer that administrative knots be undone through "simplification" of the legal provisions.[146]

[144] The overnight establishment of departments requiring hundreds of technicians was not impeccably accomplished. Until title III of the federal act was amended in 1939, the Board had no direct authority to require a merit system of appointments, and charges of political packing were made in a number of states such as Massachusetts and Tennessee. The personnel situation was also complicated by the system of federal quarterly grants to the states for administration. State officials complained continually that the grants were inadequate, that the federal government was not spending as much on state administration as it cleared on the uncreditable 10 per cent of the federal tax (about $90,000,000). By the 1939 amendments, the annual sum to be available to the Board was increased from $49,000,000 to $80,000,000.

[145] It was politically dangerous to disturb the voting population by failing in this job. Thomas E. Dewey, running for Governor of New York in November 1938, made the dilatory unemployment benefit disbursement one of his chief campaign issues.

[146] It is of interest that the New York administration investigated the conditions that impeded benefit payment in the state and concluded, after examining administrative improvements gradually made in other states, that its difficulties were dissociable from the state unemployment insurance law. See New York Division of Placement and Unemployment Insurance, Bureau of Research and Statistics, *Second Report on Partial Unemployment: A Technical Report* (February 1939). The writer who was associated with the study was of the same opinion.

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Thus, 1939 witnessed a comprehensive attempt to reduce the administrative burdens by "simplifying" the provisions governing the payment of benefits. By shortening the base period, the costly necessity of retaining and utilizing employee wage records for an extended period was eliminated. Following amended federal draft bills,[147] most states now defined the period as either the calendar year or the first four of the last five quarters preceding the individual's benefit year.[148] The benefit rates were also overhauled. In practice, the alternative type of minimum—for example, $5 or three fourths of wages—had strained the administrative routine and invited sardonic public comment after low-wage claimants were awarded a few cents a week for a few weeks. Without argument, it was conceded that the time and energy expended in processing a claim should result in a more significant payment. More than half the states,[149] therefore, turned to the flat minimum now explicitly recommended by the Board.[150] Fifteen states also "simplified" the rate computation by enacting benefit scales, consisting of a column of "wage classes" and a corresponding column of weekly benefit amounts.[151] In California (which

[147] Social Security Board, *Draft Amendments to the Benefit Formulas with Transition Provisions* (January 1939).

[148] Social Security Board, *Legislative Information on Bills Affecting Unemployment Compensation* (June 1939), pp. 7-8. Either base period produced a drift of the benefit formulas from their earlier positions. According to the Board, "in the American system, the base period is provided to secure a representative section of the claimant's previous employment or wage experience." Social Security Board, *Simplification of the Benefit Formula in State Unemployment Compensation Laws* (February 1939), p. 13.

[149] *Legislative Information on Bills Affecting Unemployment Compensation*, p. 11.

[150] *Simplification of the Benefit Formula in State Unemployment Compensation Laws*, p. 41.

[151] The upper and lower limits of each wage class were given in terms of annual earnings (the "Cliffe Proposal" described below) in Maine, North Carolina, South Dakota and West Virginia, and in terms of earnings in the base-period quarter of highest earnings in Alabama, California, Connecticut, Florida, Idaho, Maryland, Massachusetts, New Mexico, New York, Rhode Island and South Carolina. The latter type of table was described in the Board's amendments to the draft bills. It was, however, already implicitly contained in the older provisions for benefit computation to some round sum. The gain in simplification by these tables depended, of course, on how well

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had introduced the idea in its 1937 act), Connecticut and Rhode Island, benefit duration was also tabulated by setting a column of maximum benefits obtainable alongside annual-earnings classes. About half the states retained the alternative type of maximum duration provision, adjusted to the reduced base period.[152] Whereas the duration in either of these two cases remained proportional to recent earnings, in Maine, Montana, New York, North Carolina, South Carolina, South Dakota, Tennessee and West Virginia, it became a flat number of weeks, uniformly for all claimants whose earnings now determined only their eligibility for benefits and weekly amount.

The simplification movement extended to the merit rating provisions in 1939 before tax reductions had been attempted under them. The provisions were repealed in Alabama, Idaho, Montana and Washington and replaced by provisions for study largely because on scrutiny their administerability was doubted.[153] Wyoming gave up its automatic rating formula and left the mode of rate adjustment to the discretion of its commission. Connecticut adopted a "compensable separation" system linking the employer's rate with the number of former employees who qualified for benefit rather than with the total benefit paid them. Delaware, Illinois, Michigan, Minnesota, Texas and Utah rewrote their provisions not only to render them more feasible, but to relate the employer's rate to the state-wide benefit payment experience as well as to his own employment experience; a similar scheme of merit rating was instituted in Massachusetts. But the new provisions evidenced a growingly complex situation.[154] It appeared that the charg-

the claimant recollected his annual or quarterly earnings, if he remembered them at all.

[152] *Legislative Information on Bills Affecting Unemployment Compensation*, p. 15. The laws now exhibited at least twenty-four different duration provisions.

[153] "Upon analyzing this provision, it appeared almost an impossible job from an administrative standpoint." Communication from Mr. Lawrence B. Lyman of the Idaho Unemployment Compensation Division. Idaho was also worried over the effect of merit rating on its diminishing insurance fund.

[154] See Social Security Board, *Experience Rating under State Unemployment Compensation Laws* (Washington, 1939) for a discussion of the difficulties

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ing of the liability for benefit payment to any employer was an involved theoretical question that had been raised, not settled by the earlier provisions.

Amendment of the unemployment compensation laws was stimulated in 1939 by non-public bodies as well as by administrative crises. In October 1938, Mr. Frank B. Cliffe of the General Electric Company submitted to members of the Interstate Conference of Unemployment Compensation Agencies a plan very similar to a set of draft amendments to the New York law recommended by the New York Employers' Conference. The "Cliffe Proposal" ostensibly sought to effect simplification through tabulation of (1) weekly benefit amounts from 0 to $15, according to twenty-seven annual-earnings classes and (2) employer contribution rates from 0.5 to 4.0 per cent, according to indices of both the state's and the employer's experience with respect to compensable unemployment.[155] Despite the provision for a flat sixteen week duration and for proportionately higher benefits in the lower-wage classes, the plan was criticized on the grounds that it would result in lower weekly payments than the current benefit formulas unless the claimant had been fully employed in the earnings year which defined his wage class.[156] Technical plausibility coupled with the timeliness of the proposal brought its benefit and merit rating schemes, with some modification, into the 1939 state

arising under the original merit rating plans and the improvement represented by new methods. The Board now adopted the term "experience rating" since "'merit rating' implies a recognition of individual effort or merit which is not achieved under any scheme yet found to be practically applicable." *Ibid.*, p. 2.

[155] According to Professor Herman Feldman and Mr. Donald M. Smith, the proposal "is to be criticized for violating one of the fundamentals of unemployment compensation, the accumulation in good times of reserves that can be carried over for the payment of benefits in bad times. This principle is discarded in favor of the pay-as-you-go principle under which each year's contribution rates would be determined so as to replenish the fund for benefits paid in the previous year. A proposal such as this stems from the current criticism of old age insurance reserves." *The Case for Experience Rating in Unemployment Compensation and a Proposed Method* (New York, 1939).

[156] See *Simplification of Benefit Formulas in State Unemployment Compensation Laws*, pp. 49-55.

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amendments as indicated above. An employee contribution, also advocated, was not adopted anywhere.

The activities of organized labor in the meantime had grown no less technical. In July 1938, the Railway Labor Executives' Association achieved a national unemployment insurance system for the railroad industry despite absence of support by the railroad employers and the national administration.[157] The Association had drafted its own bill after discarding one drawn up along the lines of the state laws.[158] The new measure appreciably expanded the unemployment compensation experiment in paying benefits for each full day of unemployment [159] at rates ranging from $1.75 to $3.00 according to six annual-earnings classes and for a uniform maximum period of eighty days. The system was financed through an employer payroll tax unembellished by merit rating which the Association ruled out emphatically on the grounds that there was "no evidence that employment in Wisconsin is either (1) more stable than it was before the passage in 1932 of its unemployment compensation law, or (2) more stable than in other states without merit rating." [160] For better or for worse, the Association's well-prepared move attained all its major objectives.[161]

In the same year that it supported the Railway Labor Executives' Association, the American Federation of Labor

[157] Since 1934, however, the Federal Coordinator of Transportation had advocated a national program for transportation employees. See *Unemployment Compensation for Transportation Employees* (Washington, 1936).

[158] "Railroad Unemployment-Insurance Systems", *Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce*, House of Representatives, 75th Congress, 3d session on H. R. 10127, p. 22.

[159] Like the British system, the railroad measure makes it unnecessary to distinguish between partially and totally unemployed claimants since compensation is not payable for days of partial unemployment. Under the state systems, administration had been complicated in 1938 by the separate partial unemployment benefit formulas which were applicable only after a 40 or 50 per cent loss in weekly earnings had occurred.

[160] *Ibid.*, p. 261.

[161] Social insurance students remained critical of one industry fund and of the possibility of more such funds as a national system for maritime employees, recommended to Congress by the Social Security Board, appeared in the offing.

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resolved that "we must have a national system of compensation for loss of work—work insurance." [162] With this ultimate goal, the Federation took immediate steps to liberalize the state benefit provisions and to affirm that adequate benefit payment was the only objective of unemployment insurance.[163] The state federations were instructed to support the full-time weekly wage basis of benefit computation rather than the annual-earnings system advocated by employers, and a plan of four weekly-wage classes was drafted, affording $8 to $20 a week for a flat twenty weeks with additional benefits for the long-period employed; the Federation also urged the establishment of a federal "reassurance" fund to "maintain the solvency of state funds under all conditions without lowering of standards." [164]

From one viewpoint, the beginnings of a movement for liberalized benefits could be discerned in the amendments of 1939. Maximum weekly benefits rose to $18 in California and Idaho and to $16 in Alaska, Illinois, Rhode Island and Utah. Solvency permitting, the Maine commission could raise rates to $18 weekly, although otherwise it could reduce both rate and duration. The highest minimum weekly amount in the country —$10—was reached in California. More liberal minima became effective in twelve states that dropped the alternative of a fraction of wages while retaining or increasing the definite sum.[165] Whereas the general weekly rate had been 1/26 of quarterly earnings in 1938, twelve states increased the rate to

[162] *Report of the Proceedings of the 58th Annual Convention of the American Federation of Labor* (Washington, 1938), p. 142.

[163] See "Merit Rating Will Bankrupt Funds and Menace Benefits", *American Federationist*, January 1939, p. 46.

[164] *Report of the Proceedings of the 58th Annual Convention . . .*, pp. 143-144. In November 1938, the C.I.O. proposed payment of a flat 18 weeks of benefit at rates from $8 to $18, depending on wage classes defined by highest quarterly earnings. *Proceedings of the First Constitutional Convention of the Congress of Industrial Organizations* (Pittsburgh, 1938), p. 81.

[165] For example, Illinois adopted a $7 minimum and Colorado a $5 minimum instead of $5, or ¾ of wages, whichever was less. Fifteen states, however, lowered the definite sum in dropping the fractional alternative so that the minimum was reduced for some workers. Florida and North Carolina, among these states, changed from $5, or ¾ of wages, to $3 and $1.50, respectively.

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1/20, 1/24 or 1/25 of such earnings.[166] The changes in the duration provisions had liberal effects. Many states either reduced the initial waiting period for partial or total unemployment benefit or eliminated additional waiting periods within the claimant's "benefit year". Aside from these tangible advances, it was significant that the subject of benefit liberalization had at length achieved a major rank in the discussion. Adequate benefit was now the chief objective of organized labor in unemployment compensation, and the state legislatures were no doubt appreciative of the fact.[167] The earnings' basis and proportional duration of state benefit payment were criticized by a congressional committee in January 1939.[168] Finally, there was visible relaxation in the attitude of the Social Security Board whose chairman informed Congress: "We feel, and the Committee on Economic Security, I believe felt, that this approach under unemployment compensation should be conservative. We have recommended to the States very conservative benefit provisions in order to await the test of experience. There isn't a single State unemployment compensation law that should not be liberalized to afford more adequate benefits than are being offered now, not a single one." [169]

But it was necessary to bear in mind current factors of a more general nature. The national administration's program for business recovery through energetic governmental spending

[166] *Legislative Information on Bills Affecting Unemployment Compensation*, p. 12.

[167] The California State Federation of Labor, which had sought a $10 minimum and a $20 maximum, claimed a victory for its program. Long Beach *Labor News*, February 3, 1939. But the Federation was unable to eliminate the state's employee contribution.

[168] See *Report of Committee on Unemployment and Relief*, Senate Report 2, pt. 1, 76th Congress, 1st session, p. 5. Senator James F. Byrnes of South Carolina, the Chairman of the Committee, introduced a bill (S. 1265) designed to carry out the committee's recommendations through a weekly-wage-class system providing benefits from $5 to $15 weekly for a uniform period of 13 weeks.

[169] "Social Security", *Hearings Relative to the Social Security Act Amendments of 1939 before the Committee on Ways and Means*, House of Representatives, 76th Congress, 1st session, v. 3, pp. 2331-2332.

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was being opposed by advocates of decreased taxes. At the same time, there was criticism of the "deflationary" government reserve funds. As a result, in August 1939 the scheduled increase in the old-age insurance payroll tax was repealed and the future size of the old-age reserve fund, originally set at $47,000,000,000, was toned down radically. Similar criticism extended to the unemployment compensation reserves that despite the benefit expenditure of 1938 had grown steadily. In a number of states a high balance of tax collections over benefit payments produced a strong reaction,[170] although the development could have been foreseen in view of the purposely stringent benefit provisions and the expressed intention to build up necessary initial unemployment reserve funds. The liberalization of 1939, therefore, may not have been so much a reaction against the intrinsic stringency of unemployment compensation as a case of an untimely plethora of funds. In other words, the amendments, while responsive to immediate demands, involved no new and general liberal criteria affecting the place of unemployment compensation in the whole unemployment assistance system. Unemployment compensation remained a limited and a detached program.

The influence of the distaste for large reserves was further revealed in the federal legislative activity of 1939. By the amendments of August 1939, the federal payroll tax was applied only to the first $3,000 of annual wages paid an employee by a covered employer, primarily, it seemed, in order to reduce the revenue return and, secondarily, to align the tax with the old-age insurance and state taxes as had been urged

[170] In 1938, $394,000,000 was expended in benefits, leaving a total of $679,000,000 in the Unemployment Trust Fund. On December 31, 1938, the funds of the 31 states paying benefits in 1938 were 18 per cent larger than when benefits first became payable. In 21 of these states, the contributions collected since that time exceeded the benefit payments. Social Security Board, *Status of State Unemployment Compensation Funds — Contribution Collections and Benefit Payments as of December 31, 1938*. In the first six months of 1939, benefit payments exceeded contributions in four of the forty-nine systems making the payment. Levine, Louis, and Lerner, E. R., "Financial Aspects of Unemployment Compensation Experience", *Survey of Current Business*, September 1939, p. 13. The excess of contributions in Massachusetts facilitated the repeal of the employee contribution in July 1939.

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by employers for several years. No less significant was the "McCormack Proposal" to permit states which met minimum benefit standards and had minimum balances in the Unemployment Trust Fund, to reduce employer rates below 2.7 per cent independently of their individual employment experience, without preventing the employers from securing the full ninety per cent credit on the federal tax.[171] The amendment passed the House but failed in the Senate which for the second time thus helped sustain the merit rating movement.[172]

Considered as a whole the developments of 1939 offer little indication of the course the legislation will ultimately take, except that practical—administrative, financial and political—issues are likely to remain effective. Apparently, there is little inclination to base the benefit provisions on a consistent underlying theory; neither the principle of bounded differentiation nor the interesting variety of formulas it has thus far engendered is sufficiently illogical at any point to stir a revolt in favor of a scheme that does not relate individual benefits somehow to past earnings sometimes. The theoretical place of merit rating in an unemployment insurance structure will probably prove less important than the hard technical problems entailed by its administration. But even the latter may not influence our administrators, who are not loathe to exercise their ingenuity in order to attain a passably working administration even if it is neither simple nor fully justifiable.

At the same time, various permanent factors may be cited that have not yet exerted their potential influence. First, the reduction in the federal works program brought no immediate reverberation in 1939. With sufficient deflation of the W.P.A., unemployment compensation might become the major line as

[171] The New Hampshire amendment of May 1939 (see footnote 106, preceding article), enabling such reduction whenever the fund exceeded $5,000,000, was in anticipation of the passage of the McCormack Proposal.

[172] If employers demanded lower payroll taxes and could have them so long as the fund remained above a minimum level, the necessity of also varying their rates according to intricate merit rating formulas might have been seriously questioned. The House Ways and Means Committee, however, felt that "this state-wide reduction plan would not alter present individual experience-rating provisions." House Report No. 728, 76th Congress, 1st session, p. 25.

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well as the "first line of defense" against unemployment—if postponement does not result from an employment rise in war-stimulated industry.[173] Secondly, unemployment insurance, if reconsidered as a branch of social insurance dealing with dependency due to unemployment, might undergo liberalizing revision in the manner of the old-age insurance amendments of 1939. Such an occurrence would depend on the attitude of the administration in power, the stage of enlightenment and effectiveness of the interested labor and employer groups and the possibility of securing state compliance. Thirdly, if the federal employer tax is reduced either because of its relation to business recovery or because a further payroll tax is desired for a program like health insurance, the contributory basis of unemployment compensation might be revamped and the question of a governmental contribution seriously raised. Fourthly, the influence of state advisory councils might increase with recognition of the necessity of frequent expert review as exemplified in the work of the British Unemployment Statutory Committee; as an alternative, the task of guiding the legislation in a definite direction might be entrusted to a federal advisory council similar to the one proposed in the amendments first passed by the House of Representatives in 1939. Whether any of these factors will prove effective enough to alter unemployment compensation significantly in the near future is problematic. In the present world crisis, the neglected questions of the nature of unemployment compensation and its relationship to other programs of assistance may remain overshadowed.

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[173] Contraction of employment at the end of the European war might induce liberalization. In 1919, unemployment insurance was a limited program in Great Britain and demobilized soldiers and unemployed civilians were afforded non-contributory benefits under an "Out-of-Work Donation" scheme. As this system was liquidated, the unemployment insurance program was extended to take in the general body of the unemployed.

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REVIEWS

The Evolution of Finance Capitalism. By GEORGE W. EDWARDS. London, New York and Toronto, Longmans, Green and Co., 1938.—xvi, 429 pp. $4.00.

This study of the development during the last century of the institutions which attend the investment of savings is usefully and opportunely conceived. On the one hand, Professor Edwards has been able to provide a conspectus of the leading features of security capitalism at different times and places which forms a convenient introduction to reading in this field. On the other, he establishes a major premise of institutional change and a minor one of contemporary crisis and impending disorganization, which support proposals for the centralization and public control of all investment machinery in the United States.

The framework of Professor Edwards' analysis derives from a stage-like theory (much influenced by Veblen and Liefmann) of a succession of economic systems. Individual capitalism, financed by the entrepreneur and his relatives and friends, began to give way to security capitalism, at different rates in different countries, about the middle of the nineteenth century. By security capitalism (used interchangeably with finance capitalism) Edwards means not only "the conversion of the savings of investors into security investment." He implies also the separation of the investor from management control and the "impersonalization" of his relations with those who use his savings. Edwards distinguishes industrial, speculative and banker capitalists as leaders in this activity. He does not, however, believe that banker security capitalism, which corresponds closely to the finance capitalism of many writers, is a final stage in capitalistic development. To the contrary he argues that it was a transitory phase in several countries, which was replaced after the World War by a renewal of industrial leadership. He interprets the rise of National Socialism as an aspect of the successful struggle of industrial capitalism against financial control. The avoidance of such struggle in the United States is one objective of his proposals for public investment control. One of the most fruitful aspects of Edwards' schema is that it has enabled him to bring the activities

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of public and private finance into a common focus and to discuss public security capitalism in the same breath as private. He has not, however, made nearly as much as his schema would permit of the differences between direct and indirect investment, nor has he recognized the great diversity of channels through which the latter has recently taken place. This failure may have caused him to err as to the most significant features of the twenties, both in the United States and Great Britain.

To support and illustrate his theory, Edwards analyzes many institutional developments in the field of finance in Great Britain, France, Germany and the United States, with side glances at Italy, Russia and Japan. He seeks also to characterize the political, legal and ideological environments of successive phases. He does not, however, have much to say about changes in technology, industrial structure or markets. Nor does he at any point face the difficult sociological problem of how financial institutions are integrated with these or with other structures which are alleged to be significantly contemporary. He is pre-Keynesian in his attitude toward the relations between investment, income, interest and employment.

The book in short arouses mixed reactions. The critical analysis of the present deserves the most careful consideration. The historical scheme involves numerous leads for detailed investigation. As a piece of historical research, however, the work is sadly deficient. There is a lack of historical feeling, illustrated by the discussion of "investment" and "commercial" bankers in early nineteenth-century England. There is ignorance, illustrated by the absence of any suggestion that the basic activity of the important issue houses of London has for decades been the acceptance business. There are far too many mistakes of detail. Capital *did* have an international character in Marx's day, hence the First International (p. 83). The *Crédit Mobilier* did not in 1859 finance Cavour, for he refused the terms, as Edwards' authority states (p. 52). The *Banque de Paris et des Pays-Bas* was founded by speculative capitalists, not industrialists (pp. 53-4). George Peabody founded the firm which is now Morgan, Grenfell & Co., not J. P. Morgan & Co. (p. 143). Rothschilds never operated "their own offices" in the United States (p. 144). There was a Democratic administration in this country to reduce the public debt between 1919 and 1921 (p. 252). The Stock Exchange at London did not in 1877, or at any other time, achieve a legalized monopoly (p. 36). France increased her foreign investments and the rate of capital export between 1890 and 1914

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(p. 43). Impurity of diction is illustrated by the repeated use of "as" for "such as".

Throughout the historical chapters, the brevity and selectiveness of treatment arouse the apprehension that statements in themselves partly true may be seriously misleading in their context. Colin Clark takes a much more optimistic view of British national income in recent years. Both on this point and in many other parts of the analysis Edwards relies far too blithely upon his neat collection of statistical series. To use savings bank deposits as an index of savings and capital issues as an index of investment is definitely unsound for Great Britain. Furthermore, too much reliance is placed upon government estimates of wealth and income, and upon such compendiums as Mulhall for other data, whose comparability is not substantiated.

Edwards has raised many of the right questions, and suggested lines along which answers may be sought. His work may be useful reading for financial specialists, who are in need of a perspective which economic history too often fails to provide. It must be used by serious historical students, however, with the greatest caution. Security capitalism is indeed complex, but so is its historical investigation.

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The Theory of Investment Value. By JOHN BURR WILLIAMS. Cambridge, Harvard University Press, 1938.—xxiii, 613 pp. $5.00.

This book endeavors to develop a new subdivision within the general field of economics, and to set it on a par with such others as the theory of monopoly or of international trade. The author brings an unusual combination of tools to his task: they include a well-developed mathematical technique, familiarity with the relevant parts of monetary and general economic theory, substantial practical experience as an investment analyst, and detailed knowledge of the history of a number of outstanding issuers of securities, both corporate and governmental. The resulting book is an important contribution both to the "practical" economic problems of the investor and to economic theory.

The book really consists of three rather different parts. The first (chapters 1-15) is an analysis *in vacuo* of the determinants of investment value. The author begins with stock prices. From

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an examination of hypothetical frequency curves of opinion as to stock values he makes an ingenious derivation of a demand curve; the marginal opinion and hence market prices, with any one such curve, are determined by the (fixed) quantity of shares outstanding (the rational investor never buys above the mean of his own schedule of probable values; but is there evidence for the peculiar shape of the probability curve of page 68?). Changes in stock prices are produced (in the short run?) by shifts in the demand curve, whereas for most commodities, changes in the (short-run?) price are produced chiefly by the impact of changes in quantities supplied on an unchanging demand curve. So also for bonds. The security demand curves can be shifted by loans to security buyers, by changes in the business outlook, and by changes in the expected future rates of interest. It should be noted that the price of stocks always represents marginal opinions; changes in these opinions can and usually do alter prices merely in consequence of *switches* in holdings, without any necessary use of additional money; and hence changes in the quantity of money, contrary to common opinion, have nothing to do with stock prices—except so far as inflation or deflation alters profits and thus makes stocks "worth" more or less (pp. 47-50).

The author then examines in more detail the determinants of investment value, defined as the present value of all future dividend payments, or of all coupon and principal payments, on the security (but should not a [small] term be added to include the expected sales value of stocks or at least the expected break-up value at some future date, symmetrically with the principal of long-term bonds?). These determinants are chiefly the expected amount and time-distribution of the payments, expected changes in the value of money, and the "pure" interest rate demanded by the investor. Formulae are worked out which permit an exact calculation of investment value from these determinants, and various complications are recognized (but the numbering of the equations seems needlessly confusing!). It is emphasized, properly, that long-term interest rates are simply a sort of average of expected short-term rates through the period in question, and may rationally be either higher or lower (pp. 60, 114 *et seq.*). The formulae are not, of course, a substitute for judgment; but when the investor has made his own best estimate for future prospects on the several relevant heads, they will enable him to combine these estimates in an accurate and realistic way.

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The second principal section (chapters 16-20) is in largest part an attempt to estimate the probable course of interest rates in the United States over the next two decades. The chief determining factors involved are judged to be taxes, the wage rates and hours of labor, and potential inflation. Mr. Williams makes a strong case for the view that the present tax system, by its severity and by its very success in "plugging up loopholes", has increased the spread between what the borrower really pays and what the lender gets, thus reducing current new investment (the fact that long-term market rates are now low is merely an evidence that borrowers carry more of the tax burden than lenders; the *gross* interest rates to borrowers, including taxes, are not low but high); and for the view that labor, by trying to shorten hours and increase wage rates out of proportion to increases in productivity, is only hurting itself and making inflation more likely. Inflation, he seems to feel, is almost inevitable if certain government policies are continued—notably spending financed by bank borrowing, taxing payrolls when wages are rigid, and encouraging demands for higher wages (p. 334). If severe inflation actually comes, however, the suffering it will impose on the masses will force a reversal of these policies. On balance, with or without inflation, it is expected that the interest rate will rise "soon", and eventually reach the level of the 1920's (p. 386). Excess reserves may well depress short-term rates for a considerable time, but cannot keep long-term rates down. The familiar argument that the future will show chronic over-saving, diminishing investment opportunities, and hence declining rates and stagnation is dimissed as being in part unsupported, in part neglectful of obvious investment potentialities (pp. 371 *et seq.*). Over-taxation, not lack of investment opportunities, is chiefly responsible for our present semi-chronic depression.

The last section (chapters 21-7) is an interesting and realistic set of case studies, in which the methods and formulae previously developed are applied to a number of leading corporations, including U. S. Steel, General Motors and American Telephone. The results will probably surprise many analysts.

To criticize the interest-rate theory underlying the book is perhaps unfair, since it is not primarily addressed to this problem. On Mr. Williams' view, however, the market rate is governed by the supply and demand for new savings (pp. 371-6), as modified —in the way made familiar by Fisher—by expected changes in the

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value of money (p. 98 and, on the Gibson paradox, p. 271). That is, it is determined in the market for new issues, and primarily for bonds (pp. 254-6). But this treatment surely underestimates, at the least, the importance of transactions in already-existing issues, of changes in liquidity preferences (that is, in general anticipations about the business future, as reflected in the kinds and amounts of assets people hold), and of changes in the money stock; when purchases of new issues out of savings are small, as at present, it is especially hard to account for the interest rate in Mr. Williams' terms alone. The marginal supply of securities on the market at a given time may be either of new or of existing issues, and the marginal demand may come either from holders of old or new hoards (money savings) or from holders of newly-created money. In this respect, at least, it seems that the truth is more with Keynes; and indeed Mr. Williams, at an earlier point in his argument (p. 18), gives nearly the Keynesian view. The effect of deposit creation on interest rates when prices remain constant is also rather blurred over. On the other hand, the treatments of the relation between long- and short-term rates (pp. 60, 115-8, 365), of brokers' loans (pp. 19-27), of quasi-rent (pp. 196 *et seq.*), of the theoretical effects of income, property and payroll taxes (pp. 219 *et seq.*, 374), and of the inability of money to "stay in" the security markets (pp. 24 *et seq.*) are excellent, and the brief discussion of the relations between money, the various kinds of prices and money velocity (pp. 48-54, 308) is admirable.

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Colbert and a Century of French Mercantilism. By CHARLES WOOLSEY COLE. New York, Columbia University Press, 1939.—Two volumes. xii, 532; 675 pp. $10.00.

This singularly objective study of the work of Colbert and his predecessors is a dispassionate record of administrative activity rather than an appraisal of policies. The author endeavored "to avoid the major failing of most commentators of Colbert—that of condemning him because he was not an economic liberal after the nineteenth century pattern"—and also "to escape the opposite error of praising him for not being an economic liberal" (I, p. ix). The vast array of activities of this hard-working minister is laid before us with so little emotional color that we become intimate spectators of a scene so crowded with action and varieties of purpose

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that we soon cease to praise or blame, fascinated by the relentless energy of a man whose austerity made him seem scarcely human. "Insensible to satire, deaf to threats, incapable of fear and of pity, concealing beneath a phlegmatic exterior a hot and impatient nature; though before deciding he asks advice with care and in good faith, he then executes despotically and crushes all opposition" (I, pp. 293-4). This characterization by a contemporary is cited with approval by the author, who confesses that the study has led him "to admire and respect Colbert and to sympathize with him in his difficulties and troubles. But his personality was such as to preclude any real feelings toward him of warmth or friendship" (I, p. ix).

This lack of human appeal doubtless explains in part the character of the literature on Colbert. He is an unsatisfactory subject for the usual biographical treatment. He is interesting only as the sponsor of a system, to be attacked or praised according to one's theories. His life was a mere incident in his work, and his theories were a pale reflection of the thought and catchwords of his contemporaries. As Professor Cole suggests, he was a well-nigh impersonal vehicle for the expression of policies which became conspicuous in the reign of Henri IV, and were thereafter a vague tradition in French administration.

Colbert is nevertheless a figure of outstanding importance, and Professor Cole has given us the fullest and best documented account that is to be found in any language. Boissonade's books represent the results of a life-long study of the sources, but his text is unduly compressed and repeatedly leaves one with the impression that the manuscripts used contained important details that have been omitted. Professor Cole's work inspires more confidence. He writes with compression of statement, but he never leaves one with the uneasy feeling that he has been obliged to omit items or incidents which he really wished to include. Citations of texts are sufficiently abundant to bring one into intimate touch with the sources. A considerable amount of material is included in the appendices. So large a portion of the Colbert manuscripts have been printed, that it is almost impossible to discover anything that is startlingly new, and Boissonade's work has long since covered the primary materials not accessible in some measure in print. The monographs on the great trading companies leave little opportunity for the discovery of new or unused material in the fields not covered by Boissonade. Professor Cole's work, based throughout upon

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a new reading of all the sources, presents, however, many new points of view and fills out the record of many incidents. It is a more compact narrative than is to be found in the major French works.

No attempt has been made to appraise the general significance of mercantilistic policy. Professor Heckscher's study of mercantilism has not been extensively used, although the general point of view is broadly consistent with Professor Cole's interpretation of Colbert's work. It is difficult to avoid the feeling that this general problem might best have been treated with more courage and at greater length. There can now be little doubt but what the state must in many ways participate in the direction of economic life and in the development of new social structure. In any particular society, the precise balance between state and individual activity must vary in accordance with the temper of the people and its historical tradition. Even a brief statement on these issues would place the work of Colbert more significantly in the history of economic policy and administration.

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Pursuit of Happiness: The Story of American Democracy. By HERBERT AGAR. Boston, Houghton Mifflin Co., 1938.—387 pp. $3.00.

This is a tract for the times written by one who sees American democracy threatened not by foes from without, but by cynical indifference within. The United States is a rich nation which tolerates a dismaying amount of poverty. Such conditions as hopeless peasantry, financial trickery, ruthless exploitation of workers, and government by "fixing" and favors point to the possibility of the destruction of the American system. Have the people sufficient morale to correct these abuses or must they yield power to some form of totalitarianism? The author believes that American democracy can survive if it continues to exercise its power of self-correction and he reëxamines the history of American politics to point out the nature and use of this reforming ability.

It is the contention of Mr. Agar that, throughout the history of the republic, one institution has been largely responsible for the zeal for the democratic idea, namely, the Democratic party. This organization is nearly as old as the Constitution and has shown a remarkable ability to survive and revive. This book is largely an interpretation

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of its career in the light of the personalities and ideas which have dominated it.

The original purpose of the Democratic party was to implement Jefferson's theories of equality and opportunity for all, and his party was organized to combat special privilege and subsidy to private enterprise. The organization, however, has not held consistently to this ideal. Jefferson himself, when he became president, found it expedient to suspend his efforts to promote it, and his successors did little to enforce it. In Jackson's day, the purpose was, in a sense, revived, after Jackson and his associates had created a political machine. He warred against the Bank and crossed swords with the planting interest. However, Jackson, and particularly his friends, were more intent on political organization and they failed to settle any of the pressing issues in the interest of the average citizen. Calhoun and the planting interest then gained control of the party. Though they had little interest in economic equality, they did propose a device which the author thinks had much merit, namely, the plan to give to minorities the right of veto. The will of the majority is not always a voice in favor of equality.

The failure of the party to maintain its purpose contributed to the disaster of civil war and discredited it for more than a decade. However, it maintained its organization, and Republican corruption and economic discontent helped it to regain power. Cleveland did little to revive the Jeffersonian creed of equality; it was for Bryan to preach and Wilson to perfect a revival of the old enthusiasm, but they were deflected by the World War and the decade of Republican supremacy which followed. The depression beginning in 1929 presented the Democratic party with its latest opportunity to battle for the ideal of equal opportunity.

Despite the repeated efforts at reform, self-correction has not accomplished the hopes of the reformers. "What has gone wrong?" The American people have failed to realize the extent to which sacrifice and self-discipline are necessary to make democracy work. They have been too easily satisfied by evasions. Too many political leaders ostensibly worship democracy and with every act violate its spirit. The nation needs more than sporadic bursts of reform in response to the proddings of conscience. There must be a sustained effort to maintain a higher plane of public and private morality. "A selfish and greedy people cannot be free" (p. 368).

The general thesis and the broad lines of this interpretation of American politics are sound. The brevity of the discussion, how-

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ever, has tempted the author into numerous generalizations from which specialists would dissent. For example, in the discussion of the situation from 1841 to 1865, the position of the Southern political leaders is made much too simple, and the easy generalities of economic interpretation make a plausible explanation. The character of the first phase of the Republican party and the influence of third parties are also more or less slighted. The Democrats were fired by crusading zeal in later years only after much preliminary effort had been exerted by other groups. The evolution of American politics is much more complex a process than this book suggests. But this is a tract, not a treatise, and those concerned with the future of American democracy should give it careful reading.

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The Cambridge Ancient History. Volume XI: *The Imperial Peace A. D. 70-192.* Edited by S. A. Cook, F. E. Adcock and M. P. Charlesworth. New York, The Macmillan Company; Cambridge, at the University Press, 1936.—xxvii, 997 pp. $10.50.

The so-called Golden Age of the Roman Empire, the age of the Flavians and Antonines, provides the acid test for the ancient historian. No other period of antiquity can so thoroughly expose superficiality of analysis, shoddy thinking, contradictions and oversimplifications. The key question may be stated in this way: How does one reconcile the "peace and prosperity" of the years 70-192 A. D., proclaimed with such apparent unanimity by contemporary writers, with the rapidity, violence and finality of the ensuing "collapse"?

This volume of the *Cambridge Ancient History* provides no answer, or, more correctly, several unsuccessful and mutually contradictory answers. The editors of the series have never sought unity of approach but have given each author full freedom of interpretation and even considerable freedom in the selection and organization of materials. The result is particularly disastrous in the present volume. No author has the opportunity to develop his own notions of the most significant institutions of the Empire, yet it is upon such basic conceptions that he must necessarily discuss the reign of Vespasian or Roman art or whatever specific topic is assigned to him. Take the Senate, for example. Is it an independent and respected group playing a leading rôle in the government of the

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Empire, or a submissive group of parasites interested only in being treated with sufficient *civilitas*, or "an aristocratic *fronde*, impotently hostile to the autocracy"? Each of these three views and all the intermediate shades can be found in the book. And the same is true of the emperor, the knights, the composition and rôle of the army, municipal self-government, and so forth.

The central chapters are the two by Hugh Last, "The Principate and the Administration" and "Rome and Empire". To resume the example of the Senate, we find Mr. Last asserting on page 416 (without supporting evidence) that "the Senate played a leading part in determining the nature of the government" and on pages 417-420 offering convincing proof that the Senate was "threatened with atrophy", encouraged to a "lazy reliance" on the emperor's judgment, "submissive", and aware "of its own incompetence." On page 400, he tells us that "throughout the first three centuries of the Empire the fundamental powers of the *princeps* were unchanged," but on page 407 that "throughout its history the Principate was in course of development. Gradually its holders increased their powers." Contradiction arising from a multiplicity of authors is confusing enough, but what adjective does one apply to Mr. Last?

In another sense, however, there is a fundamental unity in this volume, a unity in approaching not specific institutions or problems but the essence and dynamic of the Roman Empire. Various elements go to make up this common approach:

1. Phenomena like the Roman Empire are so transcendental that man cannot really understand or explain them. Empires just happen, with nature lending a helping hand. Here again Mr. Last states the position most openly (p. 435): "When the time came to organize an empire, the element in this [Roman] culture which mattered most was one for which Rome's debt was least. Her political practice was of her own devising—the creation of her own good sense encouraged by the context of her history." Contrast Greece—"Nature gave Athens an opportunity to convert allies into subjects, and her political sense was too feeble to refuse it." The destruction of the Empire, on the other hand, was caused by "external dangers and the ravages of a prolonged and widespread plague" according to the editors of the volume.

2. Somehow everything touched by the Roman Empire turns out right. There are law and order, stability, liberty (if the term is defined to fit the facts). Opponents of the imperial system are

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scoundrels whom the noble Roman rulers treat with almost superhuman patience, as in the case of the Cynics who, according to Charlesworth (p. 10), "succeeded in placing the Emperor in a difficult position; his patience was not inexhaustible, and a few years later their determined efforts at martyrdom met their reward." In this connection it is worth noting that a count of the actual number of lines reveals a grand total of four and one-half pages on slavery scattered through the volume. Of the four and one-half, half a page lists cases of mistreatment by Domitian in order to illustrate the harshness of his temper, one page enumerates various technical legal points, and the rest is on the social life of the slave.

3. The official ideology of the Empire is to be accepted as a complete and accurate description of the realities of society.

4. Institutions like the Senate or the army are largely autonomous entities, acting independently of other social forces. The army is the favorite villain of the volume, but it is never quite clear who made up the army or why it did what it did or what it is alleged to have done. Religion is similarly autonomous. The entire chapter on the rise of Christianity, for example, does not contain one sentence on the social implications of Christian ethics or of its history.

5. Great individuals are responsible for all true progress. Their birthright is partly responsible, and so we have "the Iranian mentality", "the Western trend that Augustus gave to the mind of the Empire", or "Roman civilized political instincts." Psychologists and psychiatrists who require months and even years to unravel the character structure of an individual whom they can examine daily will marvel at the precise characterizations of people who have been dead nearly two thousand years. For example, Syme says of Vespasian (p. 132): "His natural sagacity fortified him against the doctrinaire without weakening his preference for hard facts and clear outlines."

The reader who is familiar with the literature of modern imperialism will have no difficulty in placing this approach. In a brief concluding note the editors say (pp. 850-51): "the keynote of the period covered by this volume was loyalty to Rome, not merely because this loyalty had no rival, but because Rome deserved to receive it." One cannot help suspecting that though the written word is Rome, the thought is Britain.

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The Cambridge Ancient History. Volume XII: *The Imperial Crisis and Recovery, A. D. 193-324.* Edited by S. A. COOK, F. E. ADCOCK, M. P. CHARLESWORTH, N. H. BAYNES. New York, The Macmillan Co.; Cambridge, at the University Press, 1939.—xxvii, 849 pp. $10.00. Volume V of Plates, prepared by C. T. SELTMAN. xv, 243 pp. $4.00.

The publication of these two volumes brings the *Cambridge Ancient History* to completion. Volume XII covers the period from the accession of Septimius Severus in A. D. 193 to 324, the date selected for the beginning of the medieval period by the editors of the *Cambridge Medieval History.* The fifth volume of plates provides the reader with a well-chosen series of illustrations of the many and varied types of archaeological material of importance for the study of both volumes XI and XII of text. These include excellent examples of the historical reliefs, portrait sculpture, religious art, architecture, paintings, coinage, and small objects of art such as jewelry and pottery.

At a time when the foundations of contemporary civilization seem to be crumbling, the appearance of a volume dealing with the great crisis through which ancient civilization passed in the third century of our era is very timely. With many of the fundamental problems discussed we are all thoroughly familiar. The ever-increasing complexity and cost of government growing out of the needs of national defense and the baffling economic and social difficulties related to questions of taxation, currency and trade have a strangely familiar ring to modern ears. Students of present-day political ideologies will be interested in the strikingly similar ideas fostered by the military autocrats of this period, particularly in connection with the worship of the ruler, as well as the dominance of the army and the gradual ruin of the middle class.

The first and second chapters by S. N. Miller and W. Ensslin, respectively, carry the narrative history from A. D. 193 to 249. Political scientists should be particularly interested in the third section of chapter i on the policy of Septimius Severus and the first and third sections of the second chapter which treat of the futile efforts of Alexander Severus to solve the pressing problems of his time and the struggle between the conservative elements and the army after the death of Alexander.

The treatment of the relations between the Roman and Chinese empires and the culture of the intervening areas by L. Halphen in

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the third chapter, and A. Christensen's description of the civilization of Sassanid Persia in the fourth chapter, are very valuable features of this volume. The editors should be warmly commended for including these subjects which, though essential for an adequate comprehension of the period, have generally been neglected.

In chapter v, A. Alföldi traces the course of the Germanic invasions of the third century and discusses their historical effects. The same writer's penetrating analysis of the "Crisis of the Empire" (A. D. 249-270) in the sixth chapter and particularly the sections on the political factors, the relations between state and church, and the army demand thoughtful consideration. The economic history of the period is admirably treated by F. Oertel in the seventh chapter with special attention to the relation between economic factors and government and the ultimate rise of state-socialism.

R. G. Collingwood's description of Roman Britain in chapter viii emphasizes the local peculiarities of this area. Though it is to be expected that British readers would be especially interested in their own island, it is a pity that room was not found for similar treatments of some other areas such as Syria, Egypt, and the Gallic, African and Anatolian provinces. No study of the crisis and decline of ancient civilization is complete without adequate treatment of the local institutions and their bearing upon the history of the Empire as a whole.

Students of government will find the ninth chapter by H. Mattingly on the "Imperial Recovery" and the tenth and eleventh by W. Ensslin on the "End of the Principate" and the "Reforms of Diocletian" of special interest. The tenth chapter in particular provides a very careful and scholarly treatment of the political evolution toward absolutism and the factors which brought about that change. The nineteenth and twentieth chapters by N. H. Baynes on the persecution of the Christians under Diocletian and the reorganization by Constantine are of importance for political as well as religious history.

The main purpose of this review is to call attention to topics which would probably be of interest to those primarily concerned with modern political and economic problems. To the student of classical civilization some of the others, such as chapters xii, xvi, xvii and xviii on the cultural history, would be of equal or perhaps even greater interest. G. Rodenwalt's discussion of the artistic trends of the period and their relationships to general history

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(chapter xvi), for example, is particularly stimulating, and chapters xiii, xiv and xv furnish a valuable discussion of the history of Christianity during this important period.

PRESCOTT W. TOWNSEND

INDIANA UNIVERSITY

History of Parliament. Vol. II: *Register of the Ministers and of the Members of Both Houses, 1439-1509.* Issued by the Committee of both Houses charged with the production of the history. London, His Majesty's Stationery Office, 1938. (May also be obtained from British Library of Information, New York City.) —cxlix, 754 pp. £2; $10.50.

This is the second, or *Register,* volume of the group of three volumes on the history of Parliament from 1439 to 1509 that will constitute the first instalment of the monumental enterprise of which something was said in a review of the first, or *Biographies,* volume published in the issue of the QUARTERLY for September 1937. It consists of two sections, with an introduction by Colonel Josiah C. Wedgwood and a number of appendices. The first and by far the longest section deals in chronological order with the thirty Parliaments summoned during this period of seventy years, presenting for each of them the following data: a table showing when the writs were sent out, the day on which the Parliament was summoned to meet, the place and duration of the session or sessions, and the dates of prorogation (if any) and dissolution (when a date is not known precisely, the evidence for the date given is indicated in a footnote); a list of the king's principal ministers when the writs of summons were issued; a brief diary of the proceedings of the Parliament and a summary of its legislation, based upon the published Rolls of Parliament; a list of those summoned to the lords' house by individual writ, arranged by order of dignity; and a list of those returned to the commons for counties, cities and boroughs (cities and boroughs being arranged alphabetically under the counties in which they were situated). The second section, largely the work of Miss A. D. Holt, gives for each parliamentary constituency an alphabetical list of all members known to have been returned during the period with indication of the Parliament or Parliaments to which each was elected and of other constituencies (if any) for which he was returned.

The present volume takes its place as by far the fullest repository of information for the names both of those summoned by individual

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writ and of those returned for the constituencies during these seventy years. For the former the Close Rolls are the chief primary source. The names of the lords (ecclesiastical and temporal) and of the judges and serjeants to whom writs were sent were customarily written on the back of the rolls, though for five of these thirty Parliaments this was not done. For these Parliaments the lists are based upon other sources and upon inference. The names obtained from the rolls were printed in the *Report on the Dignity of a Peer,* published more than a hundred years ago, but only down to 1482. The evidence for attendance is much scantier than that for summons. From the Rolls of Parliament and other sources, however, it is possible to compile partial lists of lords present in Parliament, and the lists in this volume include the names of those who, though not known to have been summoned, were yet present. Thirty-six such cases have been discovered, and Colonel Wedgwood surmises that there were at least as many others that have not been discovered. On the strength of this evidence he makes one of his more important generalizations, namely, that the orthodox doctrine that the receipt of a writ of summons was an absolute prerequisite for attendance in the lords' house does not hold for this period. He calls attention to cases of lords who were summoned by writ during a session or even on the very last day of a session and considers it likely that they had been attending without a writ. "It seems so silly to summon a man on the day of dissolution, unless it was formally to put right what had already informally occurred" (p. lxvii).

For the personnel of the commons in the several Parliaments of this period the present volume completely supersedes the *Official Return of Members of Parliament,* published sixty years ago, the inadequacy of which for the fifteenth century has long been known to scholars. Colonel Wedgwood calls the ninety years following 1439 "the blank period" in parliamentary history. "Before 1439 nearly all names are known from the returns or from the writs for the payment of members' expenses; after 1529 nearly all names can be re-discovered. But 1439-1529 is the blank period. . . . The whole personnel of one House of Commons after another is unknown to the usual records; the Journals, if they ever existed, are lost; even the writs of summons to the peers miss fire; the returns are gone" (p. lxxx). The compilers of the *Official Return* depended exclusively for their knowledge of who were elected to Parliament upon the sheriffs' returns in the Public Record Office; for seven Parliaments between 1482 and 1497 they found no returns at all. In pre-

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paring the lists for this volume several other sources have been utilized, including Close Rolls, Fine Rolls, Rolls of Parliament, the *Paston Letters,* and the records of a number of cities and boroughs. "*The Register*", Colonel Wedgwood reports, "is still far from complete, but we have added 50 per cent. to the representatives hitherto known for this blank period. So we have 2,600 different names, perhaps 60 per cent. of all those who sat in the Commons" (p. lxxxi). This in itself is much, but the lists give us much more. They indicate, wherever possible, the member's previous parliamentary experience; his probable age when elected; his residence; his title, profession, or trade; and the offices he held at the time of election. All of this information is taken from the biographies in the preceding volume. On the basis of tabulated data interesting and important conclusions are drawn—for example, as to the numbers and proportions of "knights of the shire" who were actually knights when elected, and of residents, non-residents, lawyers, royal servants, knights, and justices of the peace returned for the boroughs. A glance at the table on pages lxxxiii-vi shows how little is known even now of the personnel of the commons in some of these Parliaments. For instance, of the 288 members returned to the Parliament of 1463-5 the names of only 73 are known.

In the second section the list of members for each borough is prefaced by a brief statement concerning the borough electorate and any ownership or control of the borough that may have affected the members. At the foot of each list is a statement of the numbers of members who were residents, non-residents, lawyers and royal servants. These statements, which are the basis of an analytical table, are regarded by Colonel Wedgwood as "probably the most valuable contribution to our knowledge of Parliament contained in this history" (p. xcvi). The table shows at a glance how ineffectual were those fifteenth-century statutes that required representative burgesses to be residents of their constituencies. Colonel Wedgwood has no doubt that parliamentary patronage existed in the fifteenth century, even though it was not as extensive or marketable as in the eighteenth century.

The importance of the presence in the commons of royal officials is emphasized: "the 'closing of the Lords' deprived those King's servants and counsellors who were not hereditary peers of their traditional place in the Upper House. Driven from the Lords they sought refuge in the Commons, and the constituencies no doubt welcomed, then as now, such important and patronizing representatives"

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(p. cxxxvii). That election to Parliament was sought after in the fifteenth century almost as keenly as today Colonel Wedgwood pronounces to be the principal new fact about the house of commons disclosed by this *History*.

It argues no lack of appreciation of the laborious and important work that Colonel Wedgwood and his coadjutors have done to say that his introduction is not always marked by meticulous accuracy. Generalizations are sometimes not sufficiently qualified. An instance of this is the statement that "carpet-baggers" (i. e., non-resident representatives) sitting for counties "never exceeded six in any one Parliament" (p. lxxxix). Turning to the table on which this statement is based, we find that six was the number of carpet-bagger county representatives returned for the Parliament of 1478. For this Parliament the names of all the 74 members returned for the counties is given as known. For the Parliament of 1497 no carpet-baggers are given as returned for counties, but the names of only 14 of the 74 members returned for counties are given as known. It is therefore evidently possible, however unlikely, that more than six carpet-baggers were returned for counties in 1497. More careful proof reading would have corrected some inaccurate references. And an attack on "professional historians" (p. lxxxii) is out of order in a work of this kind.

The usefulness of this and the preceding volume for purpose of reference will depend upon an adequate index. It is to be hoped that this will be provided in the third and concluding volume of this instalment.

ROBERT LIVINGSTON SCHUYLER

Tudor Puritanism: A Chapter in the History of Idealism. By M. M. KNAPPEN. Chicago, The University of Chicago Press, 1939.—ix, 555 pp. $4.00.

This is another in the now considerable number of recent studies of historic Puritanism in which the Puritans are presented not as the begetters of our liberties nor as the authors of our repressions but as the prime movers of a revolution which for better or for worse in the seventeenth century gave birth to the kind of world we, perhaps, see dying in the twentieth. Among serious historians the attitudes of Mr. J. T. Adams and of Mr. Belloc would seem at last to have become as obsolete as that of Mrs. Hemans. Writers such as Morison, Miller, Woodhouse, and now Knappen are not fighting the

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Puritan Revolution all over again but trying to understand what it was and what it did to us all. The first steps toward that revolution, Mr. Knappen perceives, are to be traced in the efforts of various reforming groups within the English church to bring about more drastic changes than the two great Tudors would stand for. Under Elizabeth the familiar pattern of English religious life, which is to say English life, took form in an established church controlled by the government and opposed by a constantly shifting host of non-conforming and dissenting groups. In theory this opposition was never tolerated. In practice it was never extirpated. Particular manifestations of it were for reasons of political expediency from time to time repressed, but opposition in one form and another was still, again for political reasons, permitted to continue. Thus, almost unwittingly, the English acquired that curious habit, presently called freedom, of making their dissents known by organizing parties and sects against a government they were unable and indeed unwilling to destroy, so long as it made no serious effort to destroy them. The history of Puritanism is, then, from one point of view the history of the formation of one such opposition group after another within the church, half in half out, or totally separate, of the relations of these groups to government, their movements to and fro, their experiments in organization, their doctrines, their endless differences and controversies among themselves. Much of this history has been explored by historians interested in the origins of modern protestant communions, but the general student of history has long needed an ordered statement of all these intricate matters from a strictly unbiased point of view. Such an account, from the emigration of William Tyndale to the continent in 1524 to the Hampton Court Conference in 1604, Mr. Knappen now supplies, lucidly, accurately and thoroughly.

The true significance of Puritanism is not, however, to be seen in the futile agitations of Puritan parties and sects or in their failure to beat Queen Elizabeth at the game of politics. King James, of course, did not really beat them even at Hampton Court. "Though the party was unable to secure political power," Mr. Knappen says, speaking of that occasion, "some of its ideals filtered into the national character through other channels." They did indeed. In fact, the explanation of the extraordinary power which Puritanism soon displayed must be sought in the development of those ideals and of that infiltration. What the Puritans were well on their way to accomplishing by the end of Tudor times was the reorganiza-

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tion, revitalization, reorientation of religious and moral life in the face of the new conditions by which the people were confronted. This they did to such effect that the imprint of Puritanism remains on English and American civilization to this day. In the second but distinctly lesser part of his book, Mr. Knappen endeavors to deal with this aspect of his subject by analyzing Puritan ideals, attitudes, doctrines and practices. His primary concern, however, has been with the activities of parties and sects rather than with the development of thought and expression, and the importance, the vitality, of Puritan teaching seems to this reviewer to elude him. For example, he finds, quite correctly, that the Puritans produced no great thinkers. He does not, however, perceive how important it was that in such figures as Henry Smith and William Perkins they had already in Tudor times produced great popular preachers and writers. Having said this, the reviewer must quickly say that it would be ungracious to press very far such a demand upon a writer who has done so much for the student of Puritanism and who has done it in so workmanlike a manner. The reader of Mr. Knappen's book should not fail to note the excellent survey he supplies in an appendix of the historiography of Puritanism.

WILLIAM HALLER

BARNARD COLLEGE

The Age of Reform, 1815-1870. By E. L. WOODWARD. Oxford, at the Clarendon Press; New York, Oxford University Press, 1938.—xviii, 656 pp. 15s.; $6.00.

There is much to be said for this book; it is scientifically written in a clear, albeit somewhat sober, style and is true to the facts; it is encyclopedic in scope, covering religious, educational and economic change, reviewing literary trends and movements, but by no means neglecting institutional history, foreign, colonial and domestic politics; and it has excellent bibliographical notes and many curious contemporary maps (perhaps its best feature) not readily accessible elsewhere.

Like almost all other books, however, which deal with the nineteenth century, there is something lacking. One finds a plethora of facts, arranged in orderly fashion; but there is no keynote, no common philosophy, no explanation of the general significance of what is taking place. This may be the result of the contemporary widening out of history into so many diverse channels and because we

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know so much more about England in the days of Victoria than in Elizabeth's time. On the other hand, it may come about because contemporary thought is so muddled, so confused, so uncertain as to the drift of life and its significance that we avoid generalization and take refuge in writing our histories simply by organizing multitudinous events and ideas into logical categories and letting it go at that.

This book reminds one somewhat of the *Cambridge Modern History*. It pays more attention to social and economic history than that venerable repository of historical lore, devoting approximately one third of its pages to those aspects of British history. On the other hand the religious, the economic and the literary history of the period turns out in the last analysis to be a vast summary of biographical notes. How could it well be otherwise when men like Ricardo, Huxley, Ruskin, Carlyle, Thomas and Matthew Arnold, Coleridge and Herbert Spencer are given but a page or two apiece?

The reviewer in all fairness should make clear the point of view of the author. The latter in this instance primarily is concerned with such matters as the Reform Bills of 1832 and 1867 and the Crimean War. The parts of his book which deal therewith are full and adequate; so also for the most part with India and the colonies. There may be a slight British bias in regard to South Africa, for the author neglects to mention that the Boers were to be paid for their slaves not in South Africa but in London, a fact which added greatly to their discontent before the great trek. But on the whole Mr. Woodward is generous and fair in all that concerns the empire. From the point of view of political and imperial history his book is excellent.

The trouble is that all this has been done before. We do not need so much a new account of British foreign policy as we need an explanation of the extent to which that foreign policy was determined by domestic circumstances. The great reform measures of the century, important as they are, after all are but the expression of a philosophy of politics and life which underlay them. What is that philosophy? The reviewer is not aware that anyone as yet has defined it successfully. To do so is extremely difficult; but the way to approach this problem primarily is not so much to garner new facts as to ponder deeply on the significance of those available. Mr. Woodward's book is not of much assistance here.

WALTER P. HALL

PRINCETON UNIVERSITY

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The Rise of American Naval Power, 1776-1918. By HAROLD and MARGARET SPROUT. Princeton, Princeton University Press, 1939.—xii, 398 pp. $3.75.

This volume begins with the establishment of the Revolutionary navy and ends with the close of the World War. Unlike many naval histories, it is not concerned with the details of seafights and the tactics of commanding officers, but with preparations for naval defense and the broader problems of naval strategy. It is a civil and political history of the navy, and has a unity and sweep that are lacking in the more episodic naval writings. Variety enough, however, is afforded by alternating peace and war, the territorial and industrial growth of the United States, the development of naval technology, and the limitations of responsible officials. The authors do not leave us in doubt about their aims and methods. They have attempted "to assemble the historic pattern of conditions, institutions, events, ideas, motives, and personalities, which have shaped the course of American naval development." Their investigation has proceeded chiefly along ten parallel lines: "(1) the problem of naval defense as envisaged by different persons, groups, classes, and sections, at each stage in the territorial and politico-economic expansion of the United States; (2) the continuing historic debate over the nature and scope of the navy's functions in peace as well as in war; (3) the arguments of successive generations as to the size and kind of navy required to perform these functions; (4) the evolution of ideas as to principles of naval strategy and warfare; (5) the strategic and political implications of advances in naval architecture and technology; (6) the similar implications of changing ideas as to the organization, disposition, and management of the forces afloat; (7) the like implications of the problems of Navy-Department and navy-yard administration; (8) the processes of formulating and enacting naval legislation within the American governmental system; (9) the respective rôles of organized groups and of unorganized public opinion; and (10) the international repercussions and consequences of the rise of American naval power" (pp. v-vi).

Since no previous investigators have had precisely these aims and methods and very few have embraced so wide a field of inquiry, the result is a book of much novelty, a gap in naval history well filled, and a crying need adequately supplied. The authors have brought to their task great industry, scholarly methods, and competent craftsmanship. They have read and analyzed a vast amount of source

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materials of almost every kind. It is doubtful whether any one has previously exploited so thoroughly the proceedings of Congress, the documents of the federal government, and the reports of officials. Judging from their numerous references to sources, one can readily believe that they have analyzed "thousands of speeches, scores of parliamentary battles, and dozens of critical roll calls" (p. 383). They have not used many manuscript sources; for their purpose this was not necessary. "Slips" are rare; one may be worth noting: The *Oregon* did not round Cape Horn in 1898 (p. 213), but passed through Magellan Strait. While the factual information of the volume is important, the conclusions drawn from it are of even greater interest and value. These will serve to clarify the hazy minds of laymen and to emphasize the evils of jobbing, the muddling of responsible officials, the impossibility of quickly improvising a navy, the secondary rôle played by deep-sea raiding, the dependence of adequate defense upon capital ships, and the dangers arising from a failure to coördinate naval and foreign policy. For the naval expansion of the two decades 1890-1909, particular credit is justly given to Admiral Mahan and Theodore Roosevelt. They must also share responsibility for the long salient in the Pacific Ocean stretching to the Philippines, at the present time almost indefensible without the aid of foreign navies. Sprouts' book is here proposed for the Pulitzer prize in American history.

CHARLES O. PAULLIN

WASHINGTON, D. C.

American Shipping Policy. By PAUL MAXWELL ZEIS. Princeton, Princeton University Press; London, Oxford University Press, 1938.—ix, 254 pp. $3.00.

In recent years the American literary market has been flooded with books on trusts and monopolies, but this is the first comprehensive study dealing with monopoly of an industry which is vital to the security of our nation, namely, the American merchant marine. Thoughtful Americans who are puzzled as to why the merchant marine fell from its once high estate to a second-rate position among the nations of the world, and why we have failed since to develop it second to none, will find the answer in Mr. Zeis's following thought: When shipping interests are forced to choose between private profits and public interest, they invariably place private gain before public advantages. Since the launching of our independence there has been going on a keen and fratricidal struggle between two pow-

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erful groups in the industry—the *free shippers,* who demanded freedom to purchase foreign-built ships from the lowest bidders, and the *protectionists,* who advocated high tariffs and a merchant marine built, owned and operated by American citizens. Both groups employed powerful lobbies in all the legislative chambers of the nation and neither hesitated to resort to the lowest methods of the underworld to obtain its ends. The story of their corruption of state and federal administrations constitutes one of the blackest chapters in American history. From 1867 to 1877, for instance, the shipping companies received juicy mail contracts from, and were subsidized to the tune of millions of dollars by, the government, but despite this liberal aid little headway was made in our shipping trade. The protectionists countered with the demand for more protection, higher subsidies. The free shippers and many public-spirited citizens, on the other hand, charged that the patronage, corruption and collusion between government and shippers had gone too far and that it should be stopped. As a result of this agitation Theodore Roosevelt was forced to create the Merchant Marine Commission which after numerous hearings came out in favor of a stronger merchant marine, built, owned, officered and manned by Americans.

One hopeful effect of the campaign against graft in the shipping industry was the passage of the Seamen's Act which assured more safety and security to the "neutrals" in the controversy: the seamen and the passengers. With our entrance in the World War, the Democratic party, the traditional party of the free shippers, was at the helm. What did it do to remedy the situation? Emergency laws were passed; an appropriation of $3,000,000,000 was obtained, "a figure twice the value of the total sea-going commercial fleet of the world before the War", to build an emergency fleet to transport our troops to France; a Shipping Board and a subsidiary, the Fleet Corporation, were created—and what was the result? Less than one sixth of the finished vessels were delivered before the Armistice and more than one third were being built after the War was over. In September 1918 we were forced to borrow 1,200,000 tons of cargo ships from the Allies. Is it any wonder that the Fleet Corporation was charged with betraying the interests of the nation in favor of private groups? With the return of Republican administrations, the shipbuilding industry was returned to private owners—and the old subsidy policy was restored in its full "splendor".

The New Deal held forth the hope of purging the industry of graft and of putting it on an efficiency basis. The U. S. Maritime

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Commission was created; many laws were passed calling for more safety at sea and improvement in the conditions of the staffs manning the ships. A "scientific" subsidy policy was introduced but whether or not it will prove "scientific" is for the future to determine. "The practice of compensating American shipbuilders", says Mr. Zeis, "and operators for their relative inefficiency almost inevitably will have the effect of increasing that inefficiency. Incentive to cut costs and to furnish a better service for less money is largely removed since the government makes up the difference." And thus many of the loopholes of the old remain in the new laws. Mr. Zeis is inclined to favor a stricter governmental control of the shipping industry, without high profits to private owners, and a national defense policy restricted to the national territory and its possessions. Mr. Zeis has written a thought-provoking study and every American who has the welfare of his nation at heart should read it.

MICHAEL B. SCHELER

BROOKLYN, N. Y.

The United States and World Organization, 1920-1933. By DENNA FRANK FLEMING. New York, Columbia University Press, 1938.—xiv, 569 pp. $4.00.

Professor Fleming's book "attempts to describe the chief events of world politics . . . as they centered around the League of Nations and the United States" during the period indicated by his title. He seeks to locate responsibility for the apparent failure of the League "to protect its members from conquest or to prevent the world from being plunged into war again." (Since he wrote, it has become necessary to dispense with the qualifying "apparent".) He proceeds through an historical analysis of events from Versailles to Mukden and concludes with a chapter on recent opinion in the United States and another of argument in favor of "strong participation in world government by the world's most powerful nation."

Throughout the book the author's interest is clearly not merely to permit events to produce a conclusion but to establish a thesis, that thesis being the necessity for "stronger international organization against war." This deeply felt motivation unifies the study without depriving readers of essential facts. It does, however, somewhat limit the author's concern with historical and psychological attitudes antagonistic to international organization. These were less obvious when the League to Enforce Peace was organized

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at Philadelphia than later. One recalls, however, that Professor Giddings, who addressed the second convention of the League in 1916 as an internationalist, had been a notable exponent of imperialism. The early defection of the Republican leaders when faced with the reality of a League that meant something more than pious sentiments must be explained at least as much in terms of traditional nationalism as of determination to oust the Democrats. The author might well have given more attention to the profound influences that were at work in America to keep the country out of the League.

The well-documented chronicle begins with a brief account of America's part in creating the League of Nations and of its rejection here; the strategy of Lodge in the Senate and the unrelenting efforts of George Harvey in the election of 1920 are shown to have been most decisive in defeating not Wilson only but the American intelligentsia. The period of non-recognition and obstruction of the League by the American government is reviewed. In a chapter on the Washington Conference particular attention is given to the debate in the Senate over the four power treaty. Thereafter the war debt settlements and the contradictory raising of our tariff walls—normalcy in America—reparations and the Dawes Plan are discussed. Post-war demarcations of boundaries, some by conference, others by force, the search of European states for security, with the accompanying emasculation of Articles X and XVI of the Covenant and the return to internationalism at Locarno, America's gradual turn toward coöperation with the League, the failure to adhere to the Court protocol (here Professor Fleming goes fully into the crucial intervention of John Bassett Moore), the "Kellogg Pact", financial panic and the depression, the effort toward disarmament, and finally Japan's invasion of China—these and other related features of the post-war travail of international organization are considered with remarkably sustained insight and interest and in excellent literary style. Photographs of statesmen, scholars and League buildings add to the value and attractiveness of the work.

Professor Fleming finds, in his concluding chapter, that the treaties which were written after the World War contained unjust and unwise provisions but thinks that the map of Europe which resulted is nevertheless "the best map of Europe that has ever been created." He offers a basis for this statement in the reduction by half of the numbers of suppressed minority peoples. This reviewer believes that such a conclusion is unrealistic. A map that is valid

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for less than twenty years is not a good map. Minorities that signalize their freedom by the suppression of new minorities cannot expect to remain majorities. The author falls into the error of classifying the great states into aggressors and nonaggressors and decries wars of empire while extenuating the status quo, which he recognizes to be the product of war.

With the author's devotion to international law and world organization the reviewer is in the most sincere agreement. But, as Leonard Woolf pointed out a generation ago, internationalism is barren if it means only that "law and order" must be preserved and that treaties, however unjustly imposed, are sacred. Professor Fleming thinks that there is no choice for the "have-not" nations but to accept the fact that the "have" nations are determined to keep what they have. But the former do not agree and the World War is now resumed. The reviewer does not know the answer but he has convincing evidence that international peace and world organization cannot be founded on any status quo rooted in force and vengeance.

HAROLD S. QUIGLEY

UNIVERSITY OF MINNESOTA

Survival: Through War and Revolution in Russia. By D. FEDOTOFF WHITE. Philadelphia, University of Pennsylvania Press; London, Oxford University Press, 1939.—vii, 395 pp. $3.00.

The Russian Revolution, like other tumultuous periods, has provided an almost inexhaustible store of extraordinary personal experience. Many of the most remarkable experiences no doubt have never been recorded because the one involved did not live to tell the tale, or because the survivor lacked the inclination or the talent to put his story in writing. Mr. D. Fedotoff White seems to have had that faculty which some people possess of being where things happen. He had some amazing luck, too, and with it a kind of willful obstinacy which caused him to refuse security when it was offered him and enabled him to survive cold, hunger, exhaustion, imprisonment and illness to which so many succumbed. And then, having a story to tell, Mr. White knows how to tell it.

The narrative begins with a rather nostalgic glimpse of the agreeable life in the Russian navy as it appeared to the son of a Russian naval officer at about the turn of the century. The story ends in 1921. During these years when the old order in Russia was break-

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ing down and a new order being set up Mr. White was not at the center of things where the great decisions were made. He was, for the most part, at the front where the effect of the decisions was felt. In this is the book's chief contribution to the history of the Russian Revolution.

The story covers a lot of ground. It takes in naval operations in the Baltic during the War, including the lucky capture of the German signal books which proved to be so useful to the Russians and their allies. There are interludes of desk service as naval attaché in Washington and London with a side light on the dubious methods of certain munitions contractors. It tells how the Baltic destroyers received the news of the February revolution and shows the bafflement of officers who accepted the revolution but were helpless to check the pent-up forces the overthrow had released. There is a not very flattering picture of the Root mission and of personalities in the provisional government.

Mr. White was in England when the Bolsheviks seized power, but he paid a brief visit to Petrograd in January 1918, returning to England to serve in the British navy for the remainder of the War. The rest of the book, about half of it, tells of the author's service in Siberia in Kolchak's forces. The circumstances of the rise and fall of this anti-Bolshevik movement are well enough known. Mr. White is not concerned with these broader issues but with the desperate fortunes of combat units, particularly of the river gunboat flotillas on the Kama and the Irtysh and of a battalion of the Naval Regiment on the incredible "winter march" to the east after the collapse at Omsk, when the staff fled without taking the trouble to issue orders to the troops left behind.

In this Siberian narrative there are many revealing episodes which are brilliantly done. Officers, soldiers, peasants, prisoners are living persons, moving in a real world of cold, hunger and filth. There is no doubt about Mr. White's own attitude toward the issues of the time. But unlike so many in places of greater security, he has seen beyond these formal issues. He does not write about men as lay figures, Red or White, moved about like colored pins on a map. He writes of men as human beings who react to events according to their natures and not according to a political formula. This is a great merit which should give this book a place among the valuable contributions to the literature of the Russian Revolution.

H. H. FISHER

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Trade Associations in Law and Business. By BENJAMIN S. KIRSH and HAROLD ROLAND SHAPIRO. New York, Central Book Company, 1938.—399 pp. $5.00.

In this treatise the legal, and to a lesser extent the economic, aspects of various functions of trade associations are discussed. The authors consider pertinent court decisions and formulate general guiding principles, without attempting to state dogmatically the precise limits to which trade associations can legally carry their activities. Approximately half the book deals with the collection and dissemination of information on cost accounts, trade statistics and credit risks and the standardization of products. In the remainder attention is paid to problems of combinations in restraint of trade.

The services of trade associations in pooling statistical and cost data are regarded as economically desirable. The discussion of the important cases restricting publication of data adds little to other treatments. Credit bureau functions are praised as means of reducing losses. It is regarded as unfortunate that voluntary associations have less privilege of immunity than private mercantile agencies, and American law is contrasted unfavorably with British decisions in this respect. In the consideration of trade relations, compulsory arbitration is lauded as a device to avoid expensive litigation.

Mass production, reduced inventories and improvement in quality arising from standardization are balanced against loss of freedom of trade association members in choosing sizes and types of products. Generally the results are socially desirable, and the provisions are legal except where used to eliminate all low-priced lines or where, in the absence of active price competition, undue restraint results from the curtailment of competition in quality or terms of sale.

In discussing problems of discrimination and price fixing by combinations, the authors devote a short chapter to basing-point systems. Combinations of sellers to fix prices are considered at length. Especial attention is paid to cases in which boycotts appear to have been warranted. Where the seller's association does not control the market (just what proportion is necessary to constitute control is not clear) and where the intent is to eliminate bad practices or conditions in the industry, it is urged that restrictions against combinations should be moderated further. The gradual adaptation of the law relating to collective purchasing to meet the new conditions encountered since the rise of large buying organizations is considered in detail.

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Patent interchange is regarded as economically beneficial, and it is maintained that abuses can be restrained. The problem of patent suppression does not seem, however, to be given sufficient consideration. The final chapter deals with problems of export trade associations.

Without undue exaggeration, this book may be characterized as a panegyric for trade associations. Relaxation of legal restrictions and the introduction of more self-government in industry are favored. Whether experience with trade associations, especially under the N.R.A., justifies this optimism is open to debate. The authors might well have been more critical in their appraisal of the possible consequences of decreased price competition through greater trade association activity, especially since they maintain that the only practical alternatives are further "trustification" of industry or increasing government regulation, and that both mean that the small independent business will disappear.

W. EDWARDS BEACH

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BOOK NOTES

A useful addition to the Carnegie Endowment's series on *The Relations of Canada and the United States* is the first Canadian casebook on international law—*Canada and the Law of Nations* (Toronto, The Ryerson Press; New Haven, Yale University Press; London, Oxford University Press, 1938; xxvii, 567 pp. $4.00), edited by Professor Norman MacKenzie of Toronto and Professor Lionel H. Laing of William and Mary. Canada, a comparative latecomer to the international community, may as yet offer less material on international law than do older states; but her courts have long dealt with certain fields of the subject, and a wealth of valuable decisions has hitherto lain buried in the reports of our northern neighbor. This volume contains 101 Canadian court decisions, ten cases before the British Privy Council on appeal from Canada, three other Privy Council decisions, 26 cases from courts of the United States (chiefly on points involving Canada or Canadians; they are used where suitable Canadian cases are lacking), and seven decisions of international tribunals (the *I'm Alone* case between Canada and the United States, the *North Atlantic Coast Fisheries* arbitration, and five decisions of the British-American Claims Arbitration under the agreement of 1910). Opening with a chapter on "Canada, an International Entity", the casebook continues with chapters on "Jurisdiction over Territory" (including discovery, boundaries, accretion, state servitudes, territorial waters, the adjacent high seas, jurisdictional immunities, and results of the transfer of territory); "Status of Indians"; "Individuals in International Law" (treating naturalization, domicile, rights of aliens, exclusion and deportation, and extradition); "International Rights and Duties" (treaties and state responsibility); "Private International Law"; and "War and Its Effects" (covering declaration of war, treason and sedition, enemy status, trading with the enemy, status of resident enemy aliens, enemy property, prize courts, effect of war on treaties, neutral duties, and belligerent interference with neutral commerce). The proportionate space given the various subjects seems to depend upon the relatively small number of Canadian cases in some branches of international law. The opinions are printed rather fully, with little paraphrasing by the editors. Each case is preceded by a short headnote;

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critical footnotes would have been welcome. Despite its title the book makes no attempt to present material other than court decisions on the Canadian contribution to international law; scholars elsewhere might have welcomed inclusion of treaties, diplomatic correspondence, and legislation (although their place in a casebook remains debatable). The book should prove successful in its purpose of showing to Canadians "the vital fact that international law is not a subject of abstract academic interest, but is rooted in the experience of their own country as expressed through courts familiar to them." As a casebook for teaching international law, it would afford useful illustrative material, but it would not seem very practicable as the casebook for a course taught primarily by the case-method as used in this country. Its greatest value lies in making these Canadian cases (mostly unfamiliar to Americans, at least) available to practitioners, teachers and students of international law throughout the world. Similar casebooks presenting the contributions of other countries would be of great importance.—WILLIAM W. BISHOP, JR., Ann Arbor, Mich.

Any book about the foreign policy of the Scandinavian States is likely to be instructive, because these nations, more than any others, act consistently as grown up, civilized nations ought to act. *The Scandinavian States and the League of Nations* (Princeton, Princeton University Press, 1939; xiii, 298 pp. $3.00) by S. Shepard Jones, the new Director of the World Peace Foundation, shows clearly how these three northern nations have served as "the conscience of the League" since its foundation. They suffered so heavily in the Great War that they abandoned "neutrality in the sense of impartial passivity" for "the prevention of war or the stopping of hostilities by common effort" (p. 260). Planning formally for a League of Nations as early as November 1917, they were deeply disappointed when the United States withdrew. Branting predicted that the attempt to create a world order based on justice would be doomed to failure without our participation (pp. 91-2). From the start the Scandinavians worked for universality, laboring incessantly to bring Germany in and favoring Russia's entry. They sought consistently to strengthen the juridical side of the League and were fearful of joining in military sanctions. But when the tests came they were sharply critical of the supineness of the Great Powers in the Manchurian dispute and overwhelmingly in favor of the economic sanctions voted against Italy in 1935. The Hoar-Laval deal stirred "a howl of indignation" through the North.

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Working at all times for disarmament and the abolition of universal military service, they were also willing to look forward to international police forces, after disarmament was well under way. They opposed efforts to humanize war as more utopian than its abolition. Scandinavian leaders fought to develop the mandates and minorities systems and the League's social services. They succeeded in making the Assembly the dominant force in the League, financially and morally, labored to decrease the undue influence of the Powers, especially of their Foreign Offices, in the Secretariat, and managed after years of struggle to secure rotation of the elective Council seats. No nations contributed better leaders to the League. This careful and exhaustive study will well repay reading by any student of post-war history or of international relations. It gives a real insight into the history of the League and many indications of the nature of that stronger league which must emerge in the future, if this planet is to be a tolerable place on which to live.—D. F. FLEMING, Vanderbilt University.

John I. Knudson's *A History of the League of Nations* (Atlanta, Turner E. Smith & Co., 1938; vi, 445 pp. $3.00) is a convenient summary of League history with special emphasis on method and procedure. The tone is friendly and optimistic; the style, elementary and readable. The first part, entitled "International Politics", deals with the origins and structure of the League and its record in the pacific settlement of disputes, the limitation of armaments and the administration of territories. Part Two is concerned with the non-political activities of the League and includes adequate descriptions of the work of the Economic and Financial Organization, the Communications and Transit Organization, and the committees on Social and Health Questions and on Intellectual Co-operation. There is a long chapter on the coöperation of the United States with the League, the author obviously being in favor of American membership. The third part of the book is devoted to the I. L. O. and the Permanent Court of International Justice, with an optimistic concluding chapter on the "Evaluation and Future of the League". Four appendices contain the texts of the Covenant, the Rules of Procedure adopted by the First Assembly, the Constitution of the I. L. O., and the Statute of the Permanent Court of International Justice. There is nothing new in the volume, but it deserves widespread use as a handy reference guide, especially for general readers and for clubs and forums. May it fulfil its author's hopes of provoking "serious thought . . . on the most effective means of building an orderly world society"!—WALTER CONSUELO LANGSAM, Union College.

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This comprehensive study of Japan's development, which appeared in its first edition over two decades ago, is now brought up to date with the addition of material on recent Japanese history—*The Development of Japan,* by Kenneth Scott Latourette (4th ed. New York, The Macmillan Co., 1938; xi, 272 pp. $2.50). Professor Latourette has also made extensive changes in the bibliographical section, which now includes most of the important more recent works. In its present form, therefore, the book will be found unusually useful by those wishing a brief and yet inclusive sketch of Japanese history from earliest times to 1938. After an explanation of the effects of the early contacts of Buddhism and Chinese bureaucratic patterns on early Japanese institutions, the author hurriedly sketches the foundation of the first military dictatorship in 1192, and then the emergence of a Japan ruled by the shogunate of the Tokugawa family after 1603: that same Japan which greeted Westerners when they opened the country in the nineteenth century. Over half the space of the present edition covers the period after the arrival of Commodore Perry in 1853 and emphasizes the important internal transformations during the years which led to the first Sino-Japanese War and the decades thereafter, when Japan took its place "among the powers of the world." In the midst of this last stage, it is significant to note, "to some Japanese minds there was a sinister aspect to American westward expansion" culminating in the occupation of Hawaii and the Philippines, so that the championing of the open-door policy for China by America was regarded by many in Japan as a "hypocritical cloak for selfish designs" (p. 206). Although the Washington Conference of 1921-22, it is pointed out, had remarkable success in lessening the danger of war in the Pacific, new problems in American-Japanese relations immediately arose from the Immigration Law of 1924, the increased strain in Chinese-Japanese relationships, and the final breakdown of later attempts at naval disarmament. Furthermore, the author is careful to note that since 1931 Japan has continually expanded. When Japanese exports came to compete in foreign markets with domestic manufacturers, irritation against the Japanese became acute abroad. Thus: "In many lands in one manner or another restrictions were placed on Japanese imports. The one peaceful outlet which Japan had left to relieve her difficult economic situation seemed blocked. . . . Now the sale of the products of Japanese factories was threatened. It was not strange that explosions took place, and in what at first seemed the direction of least resistance, China" (p. 222). Throughout the

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work as a whole, though any detailed analysis of events is extremely difficult within such a limited space, there appear certain omissions, especially in emphasis, which should be noted. For instance, there is no indication that the introduction of Buddhism in 552 A. D. by the King of Kudara, a Korean state (p. 24), was a direct attempt to win Japan's favor for a military alliance. In discussing the economic conditions of the country after the seventeenth century, the statement that "there was little abject poverty" (p. 75) is not borne out by the fact that there were devastating famines throughout the period, witness that of 1783, that innumerable peasant uprisings, mostly motivated by economic distress, occurred, and that the population remained practically stationary. In referring to the more immediate conditions, the iron and steel industry is described as "still in its infancy" (p. 242), but this fails to emphasize the all-important fact that since the beginning of the rationalization of industry in 1930, heavy industries have grown tremendously and largely eclipsed light or textile manufacturing. Also in showing the steady rise in power of the military in recent years (p. 234), more importance might have been given the rôle played by the secret, patriotic societies. A noticeable omission in the newly compiled bibliographical list at the end of the book is the set of volumes entitled *Bibliography of the Japanese Empire, 1906-1935,* by Nachod and others. However, the task before the author, the presentation of a description of Japan's development from earliest times, has been excellently handled.—HUGH BORTON, Columbia University.

History of Colombia, by Jesús María Henao and Gerardo Arrubla, translated and edited by J. Fred Rippy (Chapel Hill, The University of North Carolina Press, 1938; xii, 578 pp. $5.00), is the second volume of the Inter-American Historical Series prepared by a group of American scholars under the editorship of Dr. James A. Robertson. The Spanish original is the official textbook for secondary schools of Colombia. It was first published at the time of the Centenary of Independence and has appeared in five editions, the last being used for this translation. The authors are outstanding historians and writers of Colombia, and the work is highly regarded in that country. The English version is said to present the original in a "somewhat abridged form". In reality the English edition is only about 56 per cent the length of the Spanish. The reduction is accomplished by extensive omissions, condensations and summaries which are indicated in the text, although it is not possible to tell the exact amount eliminated in each instance. In addition, the trans-

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lation is very free, and many words and phrases are omitted without any indication thereof. The emphasis on the various periods of the history of Colombia is much changed in the English. The Spanish text devotes 41.7 per cent of the pages to the colonial period (1500-1810); 19.1 per cent to the revolutionary epoch (1810-1819); 23.0 per cent to the foundation of the republic (1819-1853); and 16.2 per cent to the recent period (1853-1921). The English on the other hand gives percentages of 37.3, 25.3, 26.8 and 10.6 to these periods, respectively. The reduction in the amount devoted to the colony is due largely to the omission of material relating to the Indians. The increase for the period of revolution is not explainable, but is perhaps due to the fascination of the story of that struggle in Colombia. The slight increase in the period from 1819-1853 perhaps comes from a desire for a greater emphasis on the national period. Although the treatment of the more recent period of the history of Latin American countries presents difficulties, it is hard to understand why the English version so greatly decreases the proportion of the text devoted to that epoch. In view of the problems presented in making available an English version of this history, one wonders whether a completely rewritten text based on the Spanish, such as Chapman's version of Altamira's *Historia de España y la civilización española,* would not have been more satisfactory. In such a presentation a better balance among the various periods of Colombian history could undoubtedly have been maintained. The volume is essentially political in character. Nevertheless, it presents an interesting account of the history of Colombia. A classified bibliography suited to American needs has replaced the bibliographic list of the original. Two maps are included in the volume. The work is a definite contribution to the English writings on Latin American history, and Dr. Rippy is to be congratulated in making it available.—Roscoe R. Hill, The National Archives.

"It is not the object of this book", declares Mrs. Vera Micheles Dean, Research Director of the Foreign Policy Association, "to give a complete history of the post-War period in Europe, but to point out some of the principal factors which, during that period, paved the way for the Munich settlement and indicate the part they may play in the future." The author has succeeded so admirably in her purpose that her volume—*Europe in Retreat* (New York, Alfred A. Knopf, 1939; xix, 254, vii pp. $2.00)—is one of the most lucid, readable and stimulating commentaries on recent European diplomacy to appear in the post-Munich epoch. With *Mein Kampf* as a point

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of departure, she reviews very briefly the years from 1923 to 1938, analyzes shrewdly the "Mythology of Post-Hitler Europe", and then devotes 140 pages to Czechoslovakia and the crisis of 1938. The book closes with a striking comparison between 1938 and 1914 and a prognostication that fascism's next move will not be against the USSR, as Chamberlain had hoped, but against the Western Powers. Mrs. Dean writes in a spirit of dispassionate objectivity. She is concerned over the "legitimate" grievances of the fascist states. She regrets that "timely concessions" were not offered to the Caesars. These themes may irritate those disposed to a less charitable judgment of totalitarian despots and democratic defeatists. Familiarity with the Maffey Report and with Anglo-French diplomacy during the autumn of 1935, moreover, casts doubt upon the accuracy of the statement that "the British Conservatives sought primarily to check Italy's imperialist expansion." It is likewise strange reasoning which leads to the conclusion that the objective of German fascism is "the establishment of an equalitarian society." The interpretations placed upon certain aspects of the Munich crisis are also open to debate. Mrs. Dean, however, is scrupulously fair in suggesting alternative hypotheses and shows keen insight in evaluating divergent explanations. A faint perfume of faith, hope and charity adds charm to these pages, but the best qualities of the book are those of all good writing about politics: clarity, penetration, and ability to see the forest as well as the trees.—FREDERICK L. SCHUMAN, Williams College.

The aim of *War in Our Time* (New York, W. W. Norton & Company, 1939; 362 pp. $3.00), edited by Hans Speier and Alfred Kähler, is to analyze and describe the social implications of war and preparation for war, showing how "war in our time" is likely to affect the workings and destiny of our democratic institutions, the relations between nations, their financial status, the functioning of the economic systems and the standard of living. The weakest point of the study is its thesis propounded by the editors (although not sustained in all the chapters) that "tomorrow's war" governs our imagination. The legalist can accept such a formula, but legality cannot master reality today because we live in the midst of wars—covert and overt. Fortunately, some of the authors have disregarded the illusory assumption of peace of the editors and have introduced us to the true significance of the bootleg warfare raging about us. In this respect, Max Ascoli's chapter on "Peace for Our Time" stands out by its insistence that Hitler and Mussolini "are neither

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at war nor at peace with the rest of the world; they have imposed a new state of international affairs which is well beyond the two old-fashioned systems of legal relationships among nations. All the traditional patterns of peacemaking, peace-keeping and war-waging are of very little use in understanding the present-day world situation" (pp. 350-351). Next in importance are the contributions of Hans Simons on "Power Politics and Peace Plans", and Albert Salomon's analysis of "The Philosophy of Power". Throughout the work are scattered interesting points on the social and other aspects of formal slaughter. We learn, for instance, that it cost about $7,000 to kill one soldier in the Napoleonic wars, while the true-begotten son of a Mussolini roasted alive a whole village population in Ethiopia at a cost of $5,000 a head. All in all, the book is an admirable introduction to an entrancing subject. It helps to explode "peace for our time", and indicates that the preparations for war may not all prove to be substitutes for war.—JOSEPH S. ROUCEK, Hofstra College.

Timely and useful in this day of disputation over colonies is a series of papers collected under the title of *Geographic Aspects of International Relations* (Lectures on the Harris Foundation 1937. Chicago, The University of Chicago Press, 1938; xii, 296 pp. $3.00). The volume is edited by Charles C. Colby and includes contributions from Isaiah Bowman ("Population Outlets in Overseas Territories"), Pierre Denis ("International Aspects of State Intervention in Economic Life"), Harlan H. Barrows ("A National Plan and Policy for the Control and Use of Water Resources"), Derwent Whittlesey ("Reshaping the Map of West Africa"), Richard Hartshorne ("A Survey of the Boundary Problems of Europe"), Preston E. James ("The Distribution of People in South America"), Robert S. Platt ("Conflicting Territorial Claims in the Upper Amazon"), and Henry M. Leppard ("Territorial Maps of Nine Nations"). An especially interesting feature is a long table giving a tentative evaluation of fifty-six conflicting border claims in Europe. Among the major conclusions indicated by the several studies are these: There no longer exist large overseas population outlets; trade is becoming more national and less international in character; individual domestic policies often have a direct bearing on the welfare of other nations; some boundaries have been controversial for more than a century and seem destined so to remain for an indefinite period; any reshaping of the map of West Africa involves numerous problems of great

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complexity; and, much might be gained from an intensive study of physical, vegetation and population maps of South America. More important, perhaps, than these concepts is the fact that the volume emphasizes a relatively neglected approach to international relations—the geographic approach. It may fairly be said that the authors raise rather than settle questions of international import; hence one hopes that additional and more detailed studies along the lines indicated may result from its appearance.—WALTER CONSUELO LANGSAM, Union College.

In *A Philosophy for a Modern Man* (New York, Alfred A. Knopf, 1938; xii, 309, vi pp. $2.50) H. Levy discusses certain methods of natural science which may be used for an interpretation of history and an understanding of the present status of society. A champion of social democracy, he is not inclined to draft utopian plans. His realm of discussion is the sphere of probabilities. He is much concerned with the probable outcome of the conflict within the middle class, a class which works and also employs, and with the probable solution of the problem created by modern technology, which speeds up production through the use of new devices and at the same time renders idle hands that need work. In spite of his fear of fascism, Levy is convinced of the power of reason to regulate life of modern men and to free him from misery.—ARNO CARL COUTINHO, New York City.

Since certain aspects of the Turner thesis have been recently subjected to critical revaluation, the publication of *The Early Writings of Frederick Jackson Turner: With a List of All His Works* (Madison, The University of Wisconsin Press, 1938; xi, 316 pp. $3.50), comes with unusual timeliness. While two of the four Turner writings in this volume are generally available in published form—his doctoral dissertation from the Johns Hopkins Studies on "The Character and Influence of the Indian Trade in Wisconsin" (1891) and the famous essay, "The Significance of the Frontier in American History"—the book has valuable new material and serves as a convenient manual on the origin and development of Turner's ideas. The two less familiar items are well worth reprinting. The essay on "The Significance of History" (1891), a concise and masterly statement of Turner's credo as an historian, emphasizes the importance of the quest for significant causal relationships in historical processes and underlines the utility of history as a guide to action. "Problems in American History", an essay written in 1892, shows that Turner's conception of American history had been well

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formulated by that year, and deserves credit as the first clear statement of the Turner theory. In it the young historian argued that "the true point of view in the history of this nation" is not the Atlantic coast, but the Mississippi Valley, and that our "ever retreating frontier of free land is the key to American development." The reader may in part measure Turner's influence on American historiography by checking off the suggestions for research in this essay which have been fruitfully pursued by other scholars since the turn of the century. Probably the most valuable portion of the volume, however, is Fulmer Mood's illuminating introductory study of "Turner's Formative Period", in which the historian's early career is carefully reconstructed from his published writings and letters and the recollections of his students. The importance of the broad perspective of history which Turner received from his teacher William Francis Allen, and the influence of Roman history and German historical criticism, through A. H. L. Heeren, are here set forth for the first time. The usefulness of this collection is considerably increased by the inclusion of a full bibliography of writings by and about Turner from 1883 to 1935, compiled by Everett E. Edwards. Such minor items as unsigned reviews by Turner have been incorporated, but the recent critical literature on the frontier hypothesis has been omitted. The bibliography and the whole volume have separate indices.—RICHARD HOFSTADTER, New York, N. Y.

It is a long time since the London charities directory, published by the London Charity Organization Society at frequent intervals, and similar charities directories under like auspices in New York, Philadelphia, Boston, Chicago and elsewhere in the United States, contained one hundred pages, more or less, of text discussing the principles and history of social work as exemplified in action by the social agencies classified and listed in the directory. Such text has been for many students and teachers the best if not the only textbook for practical social work. Now that it has gone to the textbook writers and the space it occupied used for the increasing number of agencies listed—1300 in *Directory of Social Agencies of the City of New York, 1937-38,* edited by Anastasia H. Evans (published for the Welfare Council of New York City by Columbia University Press, New York, 1937; xiv, 488 pp. $3.00)—the directory is just as essential for the student as a manual and guide in field work, or, in the absence of field-work opportunities, for the visualization of social work in action. The Welfare Council in succession to the

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C. O. S., and the Columbia University Press by its coöperation, are rendering a useful service to social science, and an indispensable aid to the social agencies and their workers, in the preparation and publication of the *Directory*.—SAMUEL MCCUNE LINDSAY.

A Population Conference at Geneva was followed, one year later, by the organization at Paris of the International Union for the Scientific Investigation of Population Problems. Since that time three Congresses have been held under its auspices, at London in 1931, at Berlin in 1935, and at Paris in 1937. The principal objective of the Union and of these Congresses is to stimulate investigations, and to enable the experiences and researches of any one country to be placed at the disposal of all, through objective and scientific discussions. The French National Committee of the Union organized the Congress held in Paris, July 29 to August 1, 1937. The Population Association of America sent a large and representative delegation of the leaders in population research in this country, most of whom contributed papers at the sessions of the Congress. The papers and discussions, presented in French, English, German or Italian (those not in French have French abstracts), are published in eight volumes of proceedings, *Congrès International de la Population, Paris 1937* (Paris, Hermann et Cie, Éditeurs, 1938), as follows: I: *Théorie générale de la population.* II: *Démographie historique.* III: *Démographie statistique: Études d'ensemble.* IV: *Démographie statistique: Études spéciales: État de la population, migrations.* V: *Démographie statistique: Études spéciales: Natalité, nuptialité, mortalité.* VI: *Démographie de la France d'outremer.* VII: *Facteurs et conséquences de l'évolution démographique.* VIII: *Problèmes qualitatifs de la population.*—ROBERT E. CHADDOCK.

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